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Presidential Documents

Title 3—

The President

Presidential Determination No. 2019–22 of August 8, 2019

Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2020

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the foregoing list is not necessarily a reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or major illicit drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (Public Law 87–195)(FAA), the reason countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced, even if a government has engaged in robust and diligent narcotics control measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia and the illegitimate regime of Nicolas Maduro in Venezuela as having failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and to take the measures required by section 489(a)(1) of the FAA. Included with this determination are justifications for the designations of Bolivia and the Maduro regime, as required by section 706(2)(B) of the FRAA. I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that United States programs that support the legitimate interim government in Venezuela are vital to the national interests of the United States.

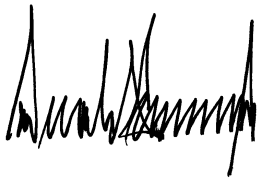
My Administration has devoted unprecedented resources to combating the scourge of illicit drugs in the United States, including by strengthening our country's borders and expanding programs to prevent illicit drug use and aid the recovery and treatment of those who need it. We are making steady progress to turn the tide of our country's drug epidemic, but more needs to be accomplished. This includes further efforts beyond our Nation's borders, by governments of countries where dangerous illegal drugs originate.

In Colombia, President Ivan Duque has made early progress in rolling back the record-high coca cultivation and cocaine production levels inherited from his predecessor and in leading efforts to restart a Colombian-led aerial eradication program. This progress needs to continue and expand, and my Administration will work with our Colombian partners to reach our joint 5-year goal to reduce coca cultivation and cocaine production by half by the end of 2023. We will also continue to coordinate closely with Colombia and other like-minded partners in our hemisphere to restore democracy in Venezuela. With the end of the Maduro dictatorship rife with criminal elements, the United States will have a much better opportunity to work with Venezuela to stem the flow of drugs leaving South America.

Along our southern border, Mexico needs to do more to stop the flow of deadly drugs entering our country. We need the Mexican government to intensify its efforts to increase poppy eradication, illicit drug interdiction, prosecutions, and asset seizures, and to develop a comprehensive drug control strategy. In particular, Mexico's full cooperation is essential to reduce heroin production and confront illicit fentanyl production and every form of drug trafficking, including through United States ports of entry.

Many Mexican military and law enforcement professionals, in cooperation with their United States counterparts, are bravely meeting this challenge and confronting the transnational criminal organizations that threaten both of our countries. We need to see a sustained and unified commitment from Mexican government officials across military and civilian agencies and working with foreign partners. Without further progress over the coming year, I will consider determining that Mexico has failed demonstrably to uphold its international drug control commitments.

You are authorized and directed to submit this designation, with the Bolivia and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and to publish it in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 8, 2019

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Rules and Regulations

Federal Register

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0365; Product Identifier 2019–NE–12–AD; Amendment 39–19718; AD 2019–16–15]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney (PW) PW1519G, PW1521G, PW1521GA, PW1524G, PW1525G, PW1521G–3, PW1524G–3, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines. This AD was prompted by corrosion found on the high-pressure compressor (HPC) front hub, which could result in certain HPC front hubs cracking before reaching their published life limit. This AD requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) and air carrier's approved Continued Airworthiness Maintenance Programs (CAMP) to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 1, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 1, 2019.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0365.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0365; 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 regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all PW PW1519G, PW1521G, PW1521GA, PW1524G, PW1525G, PW1521G–3, PW1524G–3, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines. The NPRM published in the **Federal Register** on May 31, 2019 (84 FR 25203). The NPRM was prompted by corrosion found on the HPC front hub, which could result in certain HPC front hubs cracking before reaching their published life limit. The NPRM proposed to require revisions to the ALS of the manufacturer's ICA and air carrier's approved CAMP to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW Service Bulletin (SB) PW1000G–A–72–00–0109–00A–930A–D, Issue No. 001, dated April 2, 2019 (''PW SB PW1000G–A–72–00–0109–00A–930A–D''), and PW SB PW1000G–A–72–00–0058–00B–930A–D, Issue No. 002, dated May 10, 2019 (''PW SB PW1000G–A–72–00–0058–00B–930A–D''). PW SB PW1000G–A–72–00–0109–00A–930A–D describes the revised maximum cycle limits of the HPC front hub for PW PW1500G engines. PW SB PW1000G–A–72–00–0058–00B–930A–D describes the revised maximum cycle limits of the HPC front hub for PW PW1900 engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 18 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS and CAMP	1 work-hour × $85 per hour = $85	$0	$85	$1,530

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–16–15 Pratt & Whitney: Amendment 39–19718; Docket No. FAA–2019–0365; Product Identifier 2019–NE–12–AD.

(a) Effective Date

This AD is effective October 1, 2019.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by corrosion found on the high-pressure compressor (HPC) front hub, which could result in certain HPC front hubs cracking before reaching their published life limit. The FAA is issuing this AD to prevent failure of the HPC front hub. The unsafe condition, if not addressed, could result in uncontained release of the HPC front hub, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Action

Within 90 days after the effective date of this AD, revise the Airworthiness Limitations Section of the PW Instructions for Continued Airworthiness, and for air carrier operations, the approved continuous airworthiness maintenance program, with the following maximum cycle limits for HPC front hub, part number 30G3210.

(1) For PW PW1519G, PW1521G, PW1521GA, PW1524G, PW1525G, PW1521G–3, PW1524G–3, and PW1525G–3 model turbofan engines, use the cycle limits established in Table 3, Revision to Table of Limits, of PW Service Bulletin (SB) PW1000G–A–72–00–0109–00A–930A–D, Issue No. 001, dated April 2, 2019.

(2) For PW PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines, use the cycle limits established in Table 3, Revision to Table of Limits, of PW SB PW1000G–A–72–00–0058–00B–930A–D, Issue No. 002, dated May 10, 2019.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(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) Pratt & Whitney (PW) Service Bulletin (SB) PW1000G–A–72–00–0109–00A–930A–D, Issue No. 001, dated April 2, 2019.

(ii) PW SB PW1000G–A–72–00–0058–00B–930A–D, Issue No. 002, dated May 10, 2019.

(3) For PW service information identified in this AD, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442; email:

help24@pw.utc.com; internet: *http://fleetcare.pw.utc.com.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 19, 2019.

Karen M. Grant,

Acting Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–18339 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0528; Product Identifier 2018–NE–24–AD; Amendment 39–19717; AD 2019–16–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding airworthiness directive (AD) 2018–25–01 for all Rolls-Royce plc (RR) Trent 1000–A, Trent 1000–C, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H turbofan model engines. AD 2018–25–01 required initial and repetitive inspections of the intermediate-pressure compressor (IPC) stage 1 rotor (R1) blades, IPC stage 2 rotor (R2) blades, and IPC shaft stage 2 dovetail posts, and removing any cracked parts from service. This AD retains those inspections, revises certain reinspection intervals, and adds certain engine models to the applicability. This AD was prompted by a determination by the manufacturer of the need to revise inspection intervals for certain affected engines. In addition, the FAA added recently validated additional engine models to the applicability. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 11, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 11, 2019.

The FAA must receive any comments on this AD by October 11, 2019.

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

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, United Kingdom, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *corporate.care@rolls-royce.com;* internet: *https://customers.rolls-royce.com/public/rollsroycecare.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0528.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0528; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2018–25–01, Amendment 39–19511 (83 FR 62694, December 6, 2018), (''AD 2018–25–01''), for all RR Trent 1000–A, Trent 1000–C, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H turbofan engine models. AD 2018–25–01 required initial inspections and repetitive inspections of the IPC R1 blades, IPC R2 blades, and IPC shaft stage 2 dovetail posts, and removal of any cracked parts from service. AD 2018–25–01 resulted from the manufacturer determining the need for repetitive inspections of the IPC R1 blades, IPC R2 blades, and IPC shaft stage 2 dovetail posts. The FAA issued AD 2018–25–01 to prevent failure of the IPC, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

Actions Since AD 2018–25–01 Was Issued

Since the FAA issued AD 2018–25–01, RR determined that inspection intervals for certain affected engines need to be revised. Also, since the FAA issued AD 2018–25–01, the European Union Aviation Safety Agency (EASA) has issued EASA AD 2019–0075, dated March 29, 2019 (''the MCAI''), which requires initial and repetitive inspections of IPC R1 blades, IPC R2 blades, and IPC shaft stage 2 dovetail posts installed on certain engines and removal of any cracked parts from service.

Also, since the FAA issued AD 2018–25–01, the type certificate (TC) for all Trent 1000 turbofan model engines was revised to add RR Trent 1000–AE2 and Trent 1000–CE2 engine models to the list of applicable engine models. Both Trent 1000–AE2 and Trent 1000–CE2 engine models were identified in EASA AD 2019–0075 and are subject to the same unsafe condition as the other models listed in the Applicability of this AD.

In addition, Rolls-Royce plc transferred TC E00076EN to Rolls-Royce Deutschland Ltd & Co KG (RRD) on February 21, 2019. The FAA has therefore revised the TC holder name from ''Rolls-Royce plc'' in AD 2018–25–01 to ''Rolls-Royce Deutschland Ltd & Co KG'' in this AD. Where applicable, for example when referring to the relevant service information, the FAA continues to use the name ''Rolls-Royce plc'' in this AD.

The FAA also updated our estimate for labor hours when replacing the IPC

blades and the IPC drum to be consistent with the estimates provided in the service information.

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed RR Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK130, Revision 4, dated March 4, 2019, and RR NMSB Trent 1000 72–K132, Revision 2, dated March 26, 2019. RR Alert NMSB Trent 1000 72–AK130 describes procedures for performing initial and repetitive inspections of the IPC R1 blades, IPC R2 blades, and IPC shaft stage 2 dovetail posts, and lists engine serial numbers. RR NMSB Trent 1000 72–K132, describes procedures for replacement of the IPC R1 blades, IPC R2 blades, and the IP compressor drum during refurbishment. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed RR NMSB Trent 1000 72–K099, Revision 2, dated September 27, 2018, and earlier revisions; RR NMSB Trent 1000 72–K100, Initial Issue, dated June 11, 2018; RR NMSB Trent 1000 72–K129, Initial Issue, dated June 11, 2018; and RR NMSB Trent 1000 72–K129, Revision 3, dated February 28, 2019, and earlier revisions. RR NMSB Trent 1000 72–K099, Initial Issue, and RR NMSB Trent 1000 72–K099, Revision 2, and earlier revisions, describe procedure for an ultrasonic inspection of the IPC R1 blades. RR NMSB Trent 1000 72–K100, Initial Issue, describes procedures for a visual borescope inspection of the IPC R2 blades and IPC shaft stage 2 dovetail posts. RR NMSB Trent 1000 72–K129, Revision 3, and earlier revisions, describe procedures for an ultrasonic inspection of the IPC R2 blades.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in EASA AD 2019–0075, dated March 29, 2019, and service information referenced above. The FAA is issuing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires initial and repetitive inspections of the IPC R1 blades, IPC R2 blades, and IPC shaft stage 2 dovetail posts, and removal of any cracked parts from service.

Differences Between This AD and the MCAI or Service Information

This AD requires inspections of any affected IPC part to be completed within 15 days of the effective date of this AD. EASA AD 2019–0075, dated March 29, 2019, requires inspection of certain affected IPC parts to be completed within 30 days of the effective date of EASA AD 2019–0075. The FAA expects most operators have already complied with EASA AD and find that completing the inspections within 15 days of the effective date of this AD provides an appropriate level of safety.

Interim Action

The FAA considers this AD interim action. The manufacturer is still reviewing this unsafe condition and may develop follow-on actions.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, the FAA finds that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0528 and product identifier 2018–NE–24–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact we receive about this final rule.

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

The FAA estimates that this AD affects 0 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect IPC blades and dovetail posts	20 work-hours × $85 per hour = $1700	$0	$1,700	$0

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace IPC R1 blade	128 work-hours × $85 per hour = $10,880	$1,528	$12,408
Replace IPC R2 blade	128 work-hours × $85 per hour = $10,880	993	11,873
Replace IPC 1–8 drum	224 work-hours × $85 per hour = $19,040	1,365,219	1,384,259

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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 removing airworthiness directive (AD) 2018–25–01, Amendment 39–19511 (83 FR 62694, December 6, 2018), and adding the following new AD:

2019–16–14 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–19717; Docket No. FAA–2019–0528; Product Identifier 2018–NE–24–AD.

(a) Effective Date

This AD is effective September 11, 2019.

(b) Affected ADs

This AD replaces AD 2018–25–01, Amendment 39–19511 (83 FR 62694, December 6, 2018).

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H turbofan model engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of intermediate-pressure compressor (IPC) rotor blade cracks, which could lead to rotor blade separations resulting in engine failures. The FAA is issuing this AD to prevent failure of the IPC. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 15 days of the effective date of this AD, or within the compliance times specified in the Accomplishment Instructions, Table 1, of Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK130, Revision 4, dated March 4, 2019 (''RR Alert NMSB Trent 100 72–AK130''), whichever occurs later, perform an on-wing inspection of the IPC stage 1 rotor (R1) blades in accordance with the Accomplishment Instructions, paragraph 3.A.(1), of RR Alert NMSB Trent 1000 72–AK130.

(2) Thereafter, repeat the on-wing inspections of the IPC R1 blades using the Accomplishment Instructions, paragraph 3.A.(1), and within the compliance times specified in the Accomplishment Instructions, Table 1, of RR Alert NMSB Trent 1000 72–AK130.

(3) Within 15 days of the effective date of this AD, or before exceeding the applicable threshold defined in the Accomplishment Instructions, Table 2 or Table 3, of RR Alert NSMB 72–AK130, whichever occurs later, perform an on-wing inspection of the IPC stage 2 rotor (R2) blades and IPC shaft stage 2 dovetail posts in accordance with the Accomplishment Instructions, paragraphs 3.B.(1) and 3.C.(1), of RR Alert NMSB Trent 1000 72–AK130.

(4) After performing the inspection in paragraph (g)(3) of this AD, repeat the on-wing inspections of IPC R2 blades and IPC shaft stage 2 dovetail posts using paragraphs 3.B.(1) and 3.C.(1) of RR Alert NMSB Trent 1000 72–AK130 and within the compliance times specified in the Accomplishment Instructions, Table 2 and Table 3, of RR Alert NMSB Trent 1000 72–AK130.

(5) For any on-wing inspection required by paragraphs (g)(1) through (4) of this AD, provided the stated thresholds and intervals are not exceeded, you may substitute:

(i) An in-shop inspection of an engine or module performed in accordance with the instructions of the Accomplishment Instructions, paragraphs 3.A.(2), 3.B.(2), and 3.C.(2) of the RR Alert NMSB Trent 1000 72–AK130, Revision 4, dated March 4, 2019; or

(ii) An in-shop piece part inspection during refurbishment in accordance with the Accomplishment Instructions, paragraphs 3.B.(2)(f)(vi), 3.B.(2)(g)(v), 3.B.(3)(d)(iii) of RR NMSB Trent 1000 72–K132, Revision 2, dated March 26, 2019.

(6) If any IPC R1 blade, IPC R2 blade, or IPC shaft stage 2 dovetail post is found cracked during any inspection (on-wing or

in-shop) required by this AD, remove the cracked part from service and replace with a part eligible for installation before further flight.

(h) Inspection After Operation Under Asymmetric Power

As of the effective date of this AD, before the next flight after each occurrence where engine operation in asymmetric power conditions was sustained for more than 30 minutes at less than 25,000 feet, either resulting from engine power reduction or from engine in-flight shut-down (IFSD), inspect the IPC R1 blades, the IPC R2 blades, and the IPC shaft stage 2 dovetail posts in accordance with the Accomplishment Instructions, paragraphs 3.A.(1), 3.B.(1), and 3.C.(1), of RR Alert NMSB Trent 1000 72–AK130, Revision 4, dated March 4, 2019, on the engine that did not experience the power reduction or IFSD installed on the airplane.

(i) Credit for Previous Actions

You may take credit for the inspections required by paragraphs (g)(1) and (3) of this AD if you performed these inspections before the effective date of this AD using RR Alert NMSB Trent 1000 72–AK130, Revision 3, dated January 10, 2019, or earlier revisions.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0075, dated March 29, 2019, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0528.

(l) Material Incorporated by Reference

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

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

(i) Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK130, Revision 4, dated March 4, 2019.

(ii) RR NMSB Trent 1000 72–K132, Revision 2, dated March 26, 2019.

(3) For RR service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, United Kingdom, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *corporate.care@rolls-royce.com;* internet: *https://customers.rolls-royce.com/public/rollsroycecare.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 21, 2019.

Karen M. Grant,

Acting Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–18340 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AA98

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the ''Commission'') is amending its Telemarketing Sales Rule (''TSR'') by updating the fees charged to entities accessing the National Do Not Call Registry (the ''Registry'') as required by the Do-Not-Call Registry Fee Extension Act of 2007.

DATES: This final rule (the revised fees) is effective October 1, 2019.

ADDRESSES: Copies of this document are available on the internet at the Commission's website: *https://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Ami Joy Dziekan (202–326–2648), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Room CC–9225, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To comply with the Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. 110–188, 122 Stat. 635) (''Act''), the Commission is amending the TSR by updating the fees entities are charged for accessing the Registry as follows: The revised rule increases the annual fee for access to the Registry for each area code of data from $63 to $65 per area code; and increases the maximum amount that will be charged to any single entity for accessing area codes of data from $17,406 to $17,765. Entities may add area codes during the second six months of their annual subscription period, and the fee for those additional area codes of data remains $32.

These increases are in accordance with the Act, which specifies that beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) (''CPI'') for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states that any increase shall be rounded to the nearest dollar and that there shall be no increase in the dollar amounts if the change in the CPI since the last fee increase is less than one percent. For fiscal year 2009, the Act specified that the original annual fee for access to the Registry for each area code of data was $54 per area code, or $27 per area code of data during the second six months of an entity's annual subscription period, and that the maximum amount that would be charged to any single entity for accessing area codes of data would be $14,850.

The determination whether a fee change is required and the amount of the fee change involves a two-step process. First, to determine whether a fee change is required, we measure the change in the CPI from the time of the previous increase in fees. There was an increase in the fees for fiscal year 2019. Accordingly, we calculated the change in the CPI since last year, and the increase was 2.07 percent. Because this change is over the one percent threshold, the fees will change for fiscal year 2020.

Second, to determine how much the fees should increase this fiscal year, we use the calculation specified by the Act set forth above: The percentage change in the baseline CPI applied to the original fees for fiscal year 2009. The average value of the CPI for July 1, 2007 to June 30, 2008 was 211.702; the average value for July 1, 2018 to June 30, 2019 was 253.268, an increase of 19.63 percent. Applying the 19.63 percent increase to the base amount from fiscal year 2009, leads to a $65 fee for access

to a single area code of data for a full year for fiscal year 2020, an increase of $2 from last year. The actual amount is $64.60, but when rounded, pursuant to the Act, $65 is the appropriate fee. The fee for accessing an additional area code for a half year remains $32 (rounded from $32.30). The maximum amount charged increases to $17,765 (rounded from $17,765.06).

Administrative Procedure Act; Regulatory Flexibility Act; Paperwork Reduction Act. The revisions to the Fee Rule are technical in nature and merely incorporate statutory changes to the TSR. These statutory changes have been adopted without change or interpretation, making public comment unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3521, the Office of Management and Budget (''OMB'') approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084–0169. The amendments outlined in this Final Rule pertain only to the fee provision (§ 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

Accordingly, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108; 15 U.S.C. 6151–6155.

■ 2. In § 310.8, revise paragraphs (c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $65 for each area code of data accessed, up to a maximum of $17,765; *provided,* however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay $65 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay $32 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–18446 Filed 8–26–19; 8:45 am]

BILLING CODE 6750–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 220

Submission and Consideration of Petitions for Duty Suspensions and Reductions

AGENCY: United States International Trade Commission.

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (Commission) amends its Rules of Practice and Procedure governing the submission and consideration of petitions for duty suspensions and reductions under the American Manufacturing and Competitiveness Act of 2016. The amendments are necessary to clarify certain provisions and to address concerns that have arisen in Commission practice.

DATES: Effective September 26, 2019.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary, United States International Trade Commission, telephone (202) 205–2000 or William Gearhart, Esquire, Office of the General Counsel, United States International Trade Commission, telephone (202) 205–3091. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website at *https://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding this final rule. This preamble provides background information and a regulatory analysis of the rule.

These amendments to the rule are being promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553) (APA), and will be codified in 19 CFR part 220.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. In addition, section 3(b)(5) of the American Manufacturing Competitiveness Act of 2016 (19 U.S.C. 1332 note) (the Act) directs the Commission to prescribe and publish, in the **Federal Register** and on a publicly available internet website of the Commission, procedures to be complied with by members of the public in submitting petitions for duty

suspensions and reductions under section 3(b)(1)(A) of the Act.

This rulemaking effort began when the Commission published a document in the **Federal Register** on December 26, 2018, making final the existing interim rule in part 220 of its Rules of Practice and Procedure governing the submission and consideration of petitions for duty suspensions and reductions under the Act. In that document the Commission stated that it might propose several amendments to the final rule in the near future in light of experience gained in applying the interim rule, with the intent that the amendments be in place before October 15, 2019. See document published in the **Federal Register** on December 26, 2018 (83 FR 66102), making final the interim rule published in the **Federal Register** on September 30, 2016 (81 FR 67144).

The Commission published a notice of proposed amendments to part 220 and a request for comments in the **Federal Register** on March 14, 2019 (84 FR 9273). The amendments modify the text of §§ 220.5, 220.6, 220.7, 220.9, 220.10, and 220.11 of part 220. In addition, these amendments re-designate current §§ 220.11, 220.12, 220.13, and 220.14 as §§ 220.12, 220.13, 220.14, and 220.15, respectively.

The changes principally (1) require petitions and comments to include certain additional information to assist the Commission in evaluating a petition, (2) clarify and provide additional instruction with respect to information to be included in a petition and comment, and (3) revise the requirement regarding the time when a petition may be withdrawn. The changes also divide § 220.11 into two sections, §§ 220.11 and 220.12, and renumber current §§ 220.12 through 220.14.

The document invited members of the public to file written comments on the proposed amendments no later than 30 days after the day of publication of the document, in this case, by April 15, 2019. The Commission received written comments from 13 interested parties: The American Association of Exporters and Importers (AAEI); the American Chemistry Council (ACC); the American Apparel & Footwear Association (AAFA); Ann, Inc. (Ann); Element Electronics (Element); W. L. Gore & Associates, Inc. (W. L. Gore); Mannington Mills, Inc. (Mannington); the Manufacturing Tariff Bill Coalition (MTB Coalition); the National Association of Manufacturers (NAM); Newell Brands, Inc. (Newell); Outdoor Industry Association (Outdoor); PetSmart, Inc. (Petsmart); and Simms Fishing Products, LLC (Simms).

The Commission carefully considered all comments that it received. The Commission provides its response to comments in a section-by-section analysis provided below. The Commission appreciates the time and effort of the commentators in preparing their submissions.

As required by the Regulatory Flexibility Act, the Commission certifies that these amendments will not have a significant impact on small business entities.

Procedure for Adopting the Proposed Amendments

Consistent with its ordinary practice, the Commission is making these amendments in accordance with the notice-and-comment rulemaking procedure in section 553 of the APA (5 U.S.C. 553). That procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments, and (4) publication of final amendments at least 30 days prior to their effective date.

Regulatory Analysis of Proposed Amendments to the Commission's Rules.

The Commission has determined that the proposed amendments to the rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993) and thus do not constitute a ''significant regulatory action'' for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, the proposed regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by the APA in 5 U.S.C. 553(b).

The proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1531–1538) because the proposed amendments to the rules will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year (adjusted annually for inflation), and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

The proposed rules are not ''major rules'' as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of that Act because they contain rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The Commission previously submitted an information collection request for its secure web portal for the Miscellaneous Tariff Bills Petition System to the Office of Management and Budget for Paperwork Reduction Act clearance. See 81 FR 58531 (Aug. 25, 2016). The Commission received the appropriate clearance. However, this clearance expires on September 30, 2019, and the Commission is seeking a new clearance. The Commission intends to process the information it collects consistent with these rules as amended, and the Commission intends to obtain the appropriate clearance required by the Paperwork Reduction Act before it begins its next information collection on October 15, 2019.

Overview of the Amendments to the Regulations

The final regulations contain 3 (three) changes from those proposed in the notice of proposed rulemaking (NPRM). These changes are summarized here.

First, with regard to § 220.6(a)(4), the Commission has determined to retain, rather than delete, the wording in the current rule that requires the article description to be ''sufficiently clear as to be administrable by CBP.'' The Commission has determined not to adopt the proposed substitute wording.

Second, with regard to § 220.7(b)(2), the Commission has determined to retain, rather than delete, the word ''generally''.

Third, with regard to § 220.11(c)(4), the Commission has determined to revise the rule to read ''a statement as to whether such product is generally available for sale, and if not, an explanation of its lack of availability for sale''.

Section-by-Section Explanation of the Amendments, Comments Received, and Commission Response

Part 220—Process for Consideration of Petitions for Duty Suspensions and Reductions

Section 220.5

Section 220.5 lists the types of information that must be set forth in a

petition. The proposed amendment would modify § 220.5 in five respects. First, it amends § 220.5(e)(1) to clarify that the U.S. Customs and Border Protection (CBP) ruling requested should be one that indicates CBP's classification of the article. Second, it divides § 220.5(h) into two parts. New paragraph (h)(1) requires petitions to include an estimate of both total value and, in addition, dutiable value in U.S. dollars for the next 5 calendar years, and new paragraph (h)(2) requires petitions to include an estimate of the share of total imports represented by the petitioner's imports of the subject article. Third, the amendment modifies § 220.5(j) to require that the petition include ''[t]he names of any domestic producers of the article, if available.'' Fourth, it adds a new paragraph (n) that requires the petition to include a certification that the information supplied in the petition is complete and correct to the best of the petitioner's knowledge and belief and that the petitioner understands that the information submitted is subject to audit and verification by the Commission. Fifth, it re-designates existing paragraph (n) as paragraph (o).

Comments

AAEI expressed concern that the amendment to paragraph (h) that requires petitioners to provide estimated total value and dutiable value data in U.S. dollars appears to apply to the specific petitioner, without allowing the petitioner to redact confidential information or provide it in an alternative form, such as in quantified or percentage values. AAEI also expressed concern that the new certification requirement in paragraph (n) would open petitioners to a ''quick response audit.''

The ACC expressed similar concerns about the possible disclosure of data relating to an estimate of the share of total imports. It expressed concern that the change, in the absence of a Commission process for considering whether it needs the information for its review, would discourage companies from filing petitions. It recommended that the Commission provide a discrete confidential business information process if the Commission decides such information is necessary for its review of a petition.

The MTB Coalition did not propose any changes to the proposed amendments to § 220.5. It also did not oppose the new requirements. However, the MTB Coalition asked that the Commission be ''lenient'' when auditing estimates. The MTB Coalition said that petitioners may have only limited knowledge about imports by other importers, particularly when the imported article does not directly correspond to an 8- or 10-digit HTS number. The MTB Coalition also stated that a petitioner may not know the names of domestic producers of the article. If a company does list a domestic producer, the MTB Coalition expressed concern that a petition may be ''automatically denied.''

NAM asked that the Commission treat estimates submitted by petitioners of their total share of imports as confidential business information when petitioners so request.

Commission Response

The Commission is adopting as a final rule the amendments to § 220.5. The Commission considered AAEI's concern about requiring that a petition include an estimate of dutiable value data. The Commission notes that it required petitioners to submit such data as part of their 2016 petitions, and thus this change simply incorporates prior Commission practice. The Commission did not encounter difficulties or concerns in collecting such data in 2016. The Commission is aware that disclosure of dutiable value data could help a competitor, in some instances and with the help of other data, gain insight into the dutiable value data reported by a petitioner. When a petitioner has reason to believe this may occur, the petitioner may request confidential treatment for the information it considers to qualify for such treatment.

The Commission considered the concerns expressed by ACC and NAM about possible disclosure of a petitioner's data relating to an estimate of the share of total imports. As in the preceding paragraph, the Commission notes that a petitioner may seek confidential treatment for business information that it believes qualifies for such treatment. However, the Commission also notes that sections 3(b)(C) and (D) of the Act, which set out the content requirements for the Commission's preliminary and final reports to the Committees, require the Commission to provide an estimate of the amount of revenue loss to the United States if a duty suspension or reduction takes effect. For this and certain other information the Commission requires be included in a petition, the Commission has notified petitioners, in accordance with the confidential treatment provision in section 332(g) of the Tariff Act of 1930, that certain specific information provided may be disclosed in the reports it sends to the Committees.

The Commission appreciates the concerns expressed by the MTB Coalition. The Commission notes it has already prefaced several of the petitioning requirements at issue in current § 220.5 with the term ''if available.'' The Commission also notes that it permits petitioners to provide additional explanation regarding any domestic production and considers all available information obtained with respect to each petition in preparing its final report and recommendation.

Section 220.6

Section 220.6 describes the information that should be included in the description of the article for which a duty suspension or reduction is being sought. The amendment would delete wording in § 220.6(a)(4) that requires that the description be ''sufficiently clear as to be administrable by CBP.'' The Commission would substitute more specific wording that requires the petition (1) to describe the article based on the existing Harmonized Tariff Schedule (HTS) category's description (at the 8- or 10-digit level) in HTS chapters 1 through 97, or (2) to delineate an article representing a subset of the coverage of the applicable HTS category using terminology already included in the HTS or interpreted in pertinent CBP rulings.

Comments

ACC opposed the change and said that the current ''administrable'' wording ''strikes the right balance.'' ACC indicated that the proposed wording would introduce ''unnecessary complexities,'' make the rules ''too stringent,'' and might discourage the filing of petitions.

Element opposed deletion of the wording ''sufficiently clear as to be administrable by CBP'' in the current rule and replacement with wording that would require a petitioner to describe the imported article in terms of existing 8-digit HTS subheadings or 10-digit HTS statistical reporting numbers. Element cited four reasons: (1) The terminology in the HTS is frequently out of date; (2) existing 8-digit and 10-digit HTS numbers often cover a range of products, and more detailed descriptions may be necessary to address potential concerns of or objections from producers of other similar products that fall within that tariff line; (3) ''other'' categories offer little in the way of description that could be used to narrow the scope of an MTB; and (4), even where HTS subheadings are further broken down into statistical reporting numbers that describe an article with some

specificity, such descriptions may still be too broad and require further narrowing. Element urged the Commission to amend the proposed rule change to make clear that petitioners should draft article descriptions using the existing terminology of the HTS, and allow petitioners to rely on examples of terminology found ''anywhere'' within the HTS.

The MTB Coalition expressed the view that this change will be helpful in the drafting of article descriptions and expressed the hope it will lead to fewer CBP objections over administrability issues.

NAM urged that the Commission continue to use the ''sufficiently clear'' wording in the current rule. NAM expressed the view that the proposed substitute wording ''is far too narrow and not required by the statutes.''

Commission Response

After considering the comments submitted, the Commission has decided to withdraw this proposed change. The Commission did not encounter difficulties during the first round of petitions with the current wording. It proposed the revised wording in the expectation it would provide greater clarity and help petitioners in preparing their petitions.

Section 220.7

Section 220.7 describes what constitutes a properly filed petition and describes how the Commission will treat identical and overlapping petitions filed by the same petitioner. The Commission proposes to make two changes to this section. First, it proposes to expand the title of the rule section to indicate that the rule also applies to identical and overlapping petitions filed by the same petitioner. Second, it proposes to amend § 220.7(b)(2) to delete the word ''generally.'' Section 220.7(b)(2) currently states that when a petitioner has filed one or more identical or overlapping petitions, the Commission will ''generally'' consider the earliest filed pending petition to be the petition of record, leaving open the possibility that the Commission might consider a different petition for another reason. In the few instances in which the Commission received a petition that fell into this category during the 2016 filing period, the Commission considered the earliest filed petition to be the petition of record. This change removes any uncertainty.

Comments

ACC requested that the Commission retain the term ''generally'' in order to retain the flexibility to permit petitioners to correct improperly filed or overlapping petitions.

AAFA said that the changes regarding overlapping petitions would make the current situation worse. It urged the Commission to provide petitioners with the opportunity to explain how multiple petitions might not be overlapping. It also asserted that the Commission, during the 2017 petition cycle, had applied the rule too narrowly and had rejected petitions that met the statutory requirements.

NAM expressed the view that the proposed revisions regarding overlapping petitions filed by the same petitioner fail to address the concern raised by manufacturers during the 2016–2017 cycle that resulted in the rejection of petitions. NAM asserted that the Commission applied an overly narrow construction of its own rules in rejecting petitions, and it urged the Commission to revise § 220.7 ''to establish an opportunity or procedure for petitioners to explain how multiple petitions submitted by the same petitioner may not, in fact, be overlapping petitions.''

Commission Response

The Commission is adopting the first of the two proposed changes to this section, the change in the title of the section. However, in consideration of comments favoring retention of the term ''generally,'' the Commission is withdrawing that proposed change.

Section 220.9

Section 220.9 addresses withdrawal of petitions, submission of new petitions, and amendments to petitions. The Commission proposes to amend § 220.9(a), which currently states that a petitioner may withdraw a petition at any time prior to the time the Commission transmits its final report to Congress. The Commission proposes to revise this paragraph to state that a petitioner may withdraw a petition ''no later than 30 days after the Commission submits its preliminary report.''

Comments

The MTB Coalition expressed the view that this change will help the consideration process to be more efficient.

Commission Response

In the absence of any adverse comments, the Commission is adopting as a final rule the amendments to § 220.9.

Section 220.10

Current § 220.10 addresses Commission publication and public availability of petitions and opportunity for the public to comment on such petitions. The Commission proposes to divide § 220.10 into two separate sections, with § 220.10 retitled ''Commission publication and public availability of petitions,'' and new § 220.11 titled ''Public comment period.'' Revised § 220.10 tracks the text of current § 220.10(a). The Commission proposes to delete the title of paragraph (a) of current § 220.10 and incorporate it into the new title of § 220.10.

Comments

The Commission did not receive any comments.

Commission Response

The Commission is adopting as a final rule the amendments to § 220.10.

Section 220.11

New § 220.11, titled as ''Public comment period,'' contains four paragraphs. New paragraph (a), ''Time for filing,'' largely tracks the wording in current § 220.10(b). New paragraph (b) includes a list of information items that must be included in a comment, including certain information about the commenter; a statement about whether the comment supports, opposes, or takes no position on the petition; and a certification statement. It also refers commenters to the Commission's Handbook on MTB Filing Procedures for further information. New paragraph (c) sets out a list of requirements that apply to comments from domestic producers. Comments must include: (1) A description of the product alleged to be identical, like, or directly competitive with the product that is the subject of the petition; (2) the Chemical Abstracts Services registry number (if any); (3) certain information about production or likely production of an identical, like, or directly competitive article within the United States; (4) a statement as to whether such product is commercially available and, if not commercially available, an explanation of its lack of availability; (5) addresses for the locations of U.S. production facilities; and (6) evidence demonstrating the existence of domestic production and citing possible examples. Paragraph (d) states that the Commission may provide additional opportunity for public comment and, if it does so, will publish notice of that opportunity in the **Federal Register**.

Comments

AAEI expressed support for the requirement that persons filing comments indicate whether they support, oppose, or take no position on

the petition. It also expressed concern that the required submission of additional information without the opportunity to redact may require persons filing comments to disclose confidential business information.

AAFA expressed support for the inclusion of new paragraph (d) and, in addition, asked that the Commission establish a specific public comment period for the report of the U.S. Department of Commerce relating to whether there is domestic production of a like or directly competitive article and whether a domestic producer objects. AAFA expressed the view that the Commission rejected petitions during the prior cycle based on insufficient confidential opposition.

Ann asked that the Commission amend proposed § 220.11(c)(1) to require that domestic producers include more detailed information about the domestic article. Ann asked that the Commission require producers to include the HTS code for the article and, if the producer exports the article, the Schedule B code, and to include information regarding the intrinsic characteristics of the article, including materials from which made, appearance, size and weight, quality, texture, and use. Ann asked that the Commission modify proposed § 220.11(c)(3) and (5) to include additional questions about the process at domestic facilities and for evidence of machinery and production capacity. With regard to § 220.11(c)(4), Ann expressed concern that the term ''commercially available'' was undefined and asked that the Commission require domestic producers to provide additional details, including quantity produced, the names of purchasers and how the article is distributed, and the retail price.

W.L. Gore, Outdoor, and PetSmart asked the Commission to make revisions to proposed § 220.11(c) that are similar in scope to those requested by Ann.

The MTB Coalition expressed the view that the new requirements will add more transparency to the process and encouraged the U.S. Department of Commerce to adopt a similar mechanism to increase transparency across all agencies reviewing petitions. With respect to new § 220.11(d), the MTB Coalition stated that it found the additional comment period to be helpful in the 2017 petition cycle, and it recommended incorporating the proposed change and opening it to comments on petitions falling in categories III, IV, V, and VI.

NAM similarly expressed support for an additional public comment period. It also asked that a public comment period be established following the publication of the Commission's preliminary report, and that the public be permitted to comment during that period on petitions the Commission does not recommend for inclusion (Category VI petitions), including petitions opposed by the U.S. Department of Commerce. NAM also asked that the public also be able to comment on petitions that the Commission has determined do not contain required information or for which the Commission determined that the petition is not a likely beneficiary (Category V petitions).

Newell Brands asked the Commission to make revisions to proposed § 220.11(c) that are similar to those requested by Ann, W.L. Gore, Outdoor, and PetSmart. Newell also asked that the Commission eliminate, to the extent possible, the subjective analysis conducted by the Commission and Commerce for the evaluation of domestic availability and production of an identical, like or directly competitive product. Newell stated that the term ''domestic production'' is ambiguous, and that a good produced in a country with which the United States has a free trade agreement and which enters the United States duty-free should not be considered ''domestic production.'' Newell also said that repackaging and making minor modifications in the United States that result in a change in classification should not qualify as domestic production for purposes of the Act.

Commission Response

After taking into consideration the comments received, the Commission is adopting as a final rule the amendments to § 220.11, with one exception: The Commission has redrafted § 220.11(c)(4). In the Commission's view, the amendments strike the right balance. First, they take into account the need to provide additional opportunity for public comment and at the same time allow the Commission to prepare and transmit its preliminary and final reports in the time allowed under the statute. Second, they help to address the need for some additional information from domestic producers without placing an undue additional burden on interested parties that are not petitioners or, in most cases, beneficiaries of duty suspensions and reductions sought.

With regard to AAEI's concern about the opportunity to redact confidential business information in its written comments, the Commission notes that interested parties may seek confidential treatment of business information submitted in response to § 220.11(c)(6).

To address Ann's concern regarding use of the term ''commercially available,'' the Commission has redrafted § 220.11(c)(4) to read ''a statement as to whether such product is generally available for sale and, if not, an explanation of its lack of availability for sale.'' The Commission is seeking this and other relevant information in determining whether there is domestic production of a product.

The Commission also considered the comments submitted by the MTB Coalition and NAM in support of an additional public comment period and in support of providing opportunity to consider petitions that fall in other categories. The rules, as amended, allow for the possibility of an additional comment period. Should the Commission choose to provide an additional comment period, it will publish a notice in the **Federal Register** that sets out specific details and instructions.

The Commission also considered Newell's view that the term ''domestic production'' is ''ambiguous'' and Newell's view that the term might include goods produced in a free-trade-agreement partner or goods that are merely repackaged or slightly modified. In response, the Commission notes that the term ''domestic production'' is defined in both the statute (in section 7(5) of the Act) and Commission § 220.2(h) to mean the domestic production of an article that is identical to, or like or directly competitive with, an article to which a petition for a duty suspension or reduction would apply, for which a domestic producer has demonstrated production, or imminent production, in the United States. The Commission also defined the terms ''identical,'' ''like'' and ''directly competitive'' in § 220.2(h), and for the terms ''like'' and ''directly competitive'' used definitions in the legislative history of the Trade Act of 1974. The decision as to whether a good is an import or a domestically produced good ultimately depends on the facts, and the Commission considers all available information obtained with respect to each petition in preparing its final report and recommendation.

Section 220.12

The Commission proposes to re-designate current § 220.11 as § 220.12. The section describes the contents of the Commission's preliminary report to the Committees. The Commission proposes only one change: It would delete the parenthetical in paragraph (b)(2) that relates to corrections of article descriptions.

Comments

Ann proposed that the Commission amend renumbered § 220.12(a)(3) to require that the Commission take into account the joint report of the Secretary of Commerce and Customs and Border Protection. If the report provides no suggested changes and the description is found not administrable, Ann asked that petitioners be given an opportunity to work with CBP to make technical changes to the article description.

W.L. Gore, Newell, Outdoor, PetSmart, and Simms, asked the Commission to make revisions to proposed § 220.12(a)(3) that are similar in scope to those requested by Ann.

Commission Response

In the absence of comments to the contrary, the Commission will delete the parenthetical in paragraph (b)(2) as proposed in its notice of proposed rulemaking. With regard to the modifications to § 220.12(a)(3) proposed by several interested parties, the Commission notes that it did not propose or provide notice to the public of such modifications. Accordingly, the Commission will not include the requested amendment. Moreover, the degree to which CBP chooses to work with petitioners is a matter for CBP to decide; the Commission has no authority to direct CBP to work with individual petitioners.

Sections 220.13, 220.14, 220.15

The Commission is re-designating current §§ 220.12, 220.13, and 220.14 as §§ 220.13, 220.14, and 220.15, respectively, to reflect the division of § 220.10 into two sections. The Commission received no comments on this renumbering. The Commission is not making any other changes to these sections, and is adopting the new numbering as proposed.

Additional Matters Raised in Comments

Several persons submitting comments addressed matters that go beyond the proposed changes to part 220 and the Commission's notice of proposed rulemaking. For example, Mannington Mills, Inc., of Salem N.J., raised the matter of an earlier effort to persuade the Commission to include a limited number of reliquidations in its 2017 MTB report to the Committees. Mannington asserts that the Commission decided against this ''based on incorrect and, in our opinion, false, information provided to it by Customs.'' Mannington asked that this issue be remedied and addressed in the Commission's new rules.

NAM expressed concern that the Commission's proposed revisions do not address other issues raised by petitioners during the 2016–2017 cycle. NAM cited two examples: (1) ''unsubstantiated opposition'' to the petition, such as opposition from companies that do not produce articles classified in the same HTS heading as those produced by the petitioner, or general information on production of overly broad categories without evidence that domestic producers meet the technical requirements needed by petitioning companies; and (2) the inability of stakeholders to engage directly with U.S. Customs and Border Protection (CBP). The Association did not propose any specific amendments to the rules to address its concerns. The AAFA made similar points.

Newell, Outdoor, and Simms proposed two modifications to § 220.14(b). The first would amend § 220.14 by adding a new paragraph (b)(3) to require that the identity of domestic producers opposing petitions through the U.S. Department of Commerce process be provided to petitioners before the Commission makes its final conclusions and publishes its final report. The second would amend § 220.14 to add a new paragraph (b)(4) to require that domestic producers who express opposition towards any petitions after publication of the final Commission report, and who did not participate in the public comment process, must provide all information required by § 220.11(c) and be evaluated by the Commission and Commerce in order to be considered.

Commission Response

The matter raised by Mannington goes beyond the scope of the Commission's notice of proposed rulemaking and beyond the Commission's authority under the statute. With regard to the comments of NAM, there is no requirement that a domestic article fall within the same HTS product description as an imported article in order to be like or directly competitive with the imported article. The purpose of the HTS subheadings is to classify articles for duty collection and statistical purposes as consistently as possible, not for determining whether domestic and imported articles are like or directly competitive with each other. However, as noted above, in its amendments to § 220.11, the Commission is requiring domestic producers to provide additional information in their comments, especially when such producers raise an objection to any petition. With regard to the ability of stakeholders to engage directly with CBP, that is a matter for CBP, not the Commission.

The proposals by Newell, Outdoor, and Simms to modify § 220.14(b) are not appropriate at this time. First, the Commission did not provide notice to the public that it is considering modifying this rule at this time. Second, the Commission has no authority to require the U.S. Department of Commerce to share information, including confidential business information, with petitioners or any other interested parties in this proceeding. Commerce determines how it will carry out its responsibilities under the statute and obtain the information required by law.

List of Subjects in 19 CFR Part 220

Administrative practice and procedure, Miscellaneous tariff bills.

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR part 220 as follows:

PART 220—PROCESS FOR CONSIDERATION OF PETITIONS FOR DUTY SUSPENSIONS AND REDUCTIONS

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 19 U.S.C. 1335; Pub. L. 114–159, 130 Stat. 396 (19 U.S.C. 1332 note).

■ 2. Amend § 220.5 by revising paragraphs (e), (h), and (j), redesignating paragraph (n) as paragraph (o), and adding a new paragraph (n) to read as follows:

§ 220.5 Contents of petition.

* * * * *

(e) To the extent available—

(1) A classification ruling of U.S. Customs and Border Protection (CBP) that indicates CBP's classification of the article; and

(2) A copy of other CBP documentation indicating where the article is classified in the HTS.

* * * * *

(h) For each HTS number included in the article description:

(1) An estimate of the total and dutiable value (in United States dollars) of imports of the article covered by the petition for the calendar year preceding the year in which the petition is filed, for the calendar year in which the petition is filed, and for each of the 5 calendar years after the calendar year in which the petition is filed, including an estimate of the value of such imports by the person who submits the petition and by any other importers, if available.

(2) An estimate of the share of total imports represented by the petitioner's

imports of the article that is the subject of the petition.

* * * * *

(j) The names of any domestic producers of the article, if available.

* * * * *

(n) A certification from the petitioner that the information supplied is complete and correct to the best of the petitioner's knowledge and belief, and an acknowledgement from the petitioner that the information submitted is subject to audit and verification by the Commission.

* * * * *

■ 3. Amend § 220.7 by revising the section heading to read as follows:

§ 220.7 Properly filed petition; identical and overlapping petitions from same petitioner.

* * * * *

■ 4. Amend § 220.9 by revising paragraph (a) to read as follows:

§ 220.9 Withdrawal of petitions, amendments to petitions.

(a) *Withdrawal of petitions.* A petitioner may withdraw a petition for duty suspension or reduction filed under this part no later than 30 days after the Commission submits its preliminary report, as described in § 220.12. It shall do so by notifying the Commission through the Commission's designated secure web portal of its withdrawal and the notification shall include the name of the petitioner, the Commission identification number for the petition, and the HTS number for the article concerned.

* * * * *

■ 5. Revise § 220.10 to read as follows:

§ 220.10 Commission publication and public availability of petitions.

Not later than 30 days after expiration of the 60-day period for filing petitions for duty suspensions and reductions, the Commission will publish on its website the petitions for duty suspensions and reductions submitted under § 220.3 that were timely filed and contain the information required under § 220.5. When circumstances allow, the Commission may post such petitions on its website earlier than 30 days after expiration of the 60-day period for filing petitions.

§ § 220.11 through 220.14 [Redesignated as §§ 220.12 through 220.15]

■ 6. Redesignate §§ 220.11 through 220.14 as §§ 220.12 through 220.15.

■ 7. Add a new § 220.11 to read as follows:

§ 220.11 Public comment period.

(a) *Time for filing.* Not later than 30 days after expiration of the 60-day period for filing petitions, the Commission will also publish in the **Federal Register** and on its website a notice requesting members of the public to submit comments on the petitions for duty suspensions and reductions. To be considered, such comments must be filed through the Commission's secure web portal during the 45-day period following publication of the Commission's notice requesting comments from members of the public. For purposes of this section, all petitions posted by the Commission on its website, whether or not posted early, shall be deemed to be officially published by the Commission on its website on the date of publication of the notice seeking written comments from members of the public on the petitions.

(b) *In general.* The comment shall include the following information:

(1) The name, telephone number, and postal and email address of the commenter, and if appropriate, its representative in the matter;

(2) A statement as to whether the commenter is a U.S. producer, importer, government entity, trade association or group, or other;

(3) A statement as to whether the comment supports the petition; objects to the petition; or takes no position with respect to the petitions/provides other comment;

(4) If the commenter is an importer, a list of the leading source countries of the product;

(5) A certification from the commenter that the information supplied is complete and correct to the best of the commenter's knowledge and belief, and an acknowledgement from the commenter that the information submitted is subject to audit and verification by the Commission; and

(6) Comment formats may be constrained in size, length, attachments, file type, etc., by system limitations in the Commission's secure web portal. See the Commission's Handbook on MTB Filing Procedures as posted on the Commission's website for further information.

(c) *Comments from domestic producers.* Comments from a firm claiming to be a domestic producer, as defined in § 220.2(g), shall also include:

(1) A description of the product alleged to be identical, like, or directly competitive with the product that is the subject of the petition;

(2) The Chemical Abstracts Service registry number for the product (if applicable);

(3) A statement as to whether an identical, like, or directly competitive product was produced in the current calendar year and, if not, the year in which the product was last produced or in which production is expected to begin within the United States;

(4) A statement as to whether such product is generally available for sale, and if not, an explanation of its lack of availability for sale; and/or

(5) The physical address(es) for the location(s) of the production facility(ies) producing the product within the United States; and

(6) Evidence demonstrating the existence of domestic production (*e.g.,* catalogs, press releases, marketing materials, specification sheets, copies of orders for the product).

(d) *Additional comment period.* The Commission may provide additional opportunity for public comment and, if so, will announce that comment period in the **Federal Register**.

■ 8. Amend newly redesignated § 220.12 by revising paragraph (b)(2) to read as follows:

§ 220.12 Commission preliminary report.

* * * * *

(b) * * *

(2) A list of petitions for duty suspensions and reductions for which the Commission recommends technical corrections in order to meet the requirements of the Act, with the correction specified.

* * * * *

By order of the Commission.

Issued: August 16, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–18008 Filed 8–26–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9866]

Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision 9866, which was published in the **Federal Register** on Friday, June 21, 2019. Treasury Decision 9866 contained final

regulations under section 951A of the Internal Revenue Code that provide guidance to determine the amount of global intangible low-taxed income included in the gross income of certain United States shareholders of foreign corporations.

DATES: *Effective date:* These regulations are effective on August 27, 2019.

Applicability date: June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Jorge M. Oben at (202) 317–6934 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (TD 9866) that is the subject of this correction is under section 951A of the Internal Revenue Code.

Need for Correction

As published in June 21, 2019 (84 FR 29288), the final regulations (TD 9866; FR 2019–12437) contained errors that may prove misleading and therefore need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

§ 1.951A–2 [Amended]

■ **Par. 2.** Section 1.951A–2 is amended by:

■ a. In the second sentence of paragraph (c)(4)(iv)(A)(*2*)(*i*), removing the language ''paragraph (c)(4)(ii)(A)'' and adding ''paragraph (c)(4)(iii)(A)'' in its place;

■ b. In the third sentence of paragraph (c)(4)(iv)(A)(*2*)(*ii*), removing the language ''paragraph (c)(4)(ii)(B)'' and adding ''paragraph (c)(4)(iii)(B)'' in its place; and

■ c. In paragraph (c)(4)(iv)(C)(*2*)(*iii*):

■ i. In the third sentence, removing the language ''paragraph (c)(4)(ii)(B)'' and adding ''paragraph (c)(4)(iii)(B)'' in its place; and

■ ii. In the fourth sentence, removing the language ''paragraph (c)(4)(iii)'' and adding ''paragraph (c)(4)(iii)(C)'' in its place.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2019–18348 Filed 8–26–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No USCG–2019–0684]

RIN 1625–AA08

Special Local Regulation; Frogtown Regatta, Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all navigable waters of the Maumee River, Toledo, OH from the Martin Luther King Jr. Memorial Bridge at Maumee River mile 4.30 to the Michael DiSalle Bridge at river mile 6.73. This regulated area is necessary to protect spectators and vessels from potential hazards associated with the Frogtown Regatta. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port Detroit, or a designated representative.

DATES: This temporary final rule is effective from 7 a.m. through 5 p.m. on September 28, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0684 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 MSTC Allie Lee, Waterways Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6023, email *Allie.L.Lee@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this regatta in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Detroit (COTP) has determined that potential hazard associated with regatta from 7 a.m. through 5 p.m. on September 28, 2019 will be a safety concern to anyone within waters of the Maumee river, Toledo, OH from the Martin Luther King Jr. Memorial Bridge at river mile 4.30 to the Michael DiSalle Bridge at river mile 6.73. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the regatta occurs.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. through 5 p.m. on September 28, 2019. The safety zone will encompass all U.S. navigable waters of the Maumee river, Toledo, OH from the Martin Luther King Jr. Memorial Bridge at river mile 4.30 to the Michael DiSalle Bridge at river mile 6.73. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will patrol the regatta area under the direction of the

Captain of the Port Detroit (COTP), or a designated representative. A designated representative may be a Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the COTP or a designated representative and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the COTP or a designated representative. The rules contained in the above two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. COTP or a designated representative may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. COTP or a designated representative shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the COTP or a designated representative. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The COTP or a designated representative may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The COTP or a designated representative may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the COTP. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on VHF–FM Marine Channel 16 by the call sign ''Coast Guard Patrol Commander.''

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulated area. Vessel traffic will be able to safely transit around this regulated area, which will impact a small designated area of the Maumee River in Toledo, OH for a period of 10 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM Marine Channel 16 about the regulated area and the rule allows vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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. Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation interval lasting for a period of 10 hours that will prohibit entry within waters of the Maumee river, Toledo, OH from the Martin Luther King Jr. Memorial Bridge at river mile 4.30 to the Michael DiSalle Bridge at river mile 6.73. It is categorically excluded from further review under paragraph L61 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 46 U.S.C. 70034.

■ 2. Add temporary § 100.T999–0684 to read as follows:

§ 100.T999–0684 Special Local Regulation; Frogtown Regatta, Maumee River, Toledo, OH.

(a) *Regulated area.* The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH from the Martin Luther King Jr. Memorial Bridge at river mile 4.30 to the Michael DiSalle Bridge at river mile 6.73.

(b) *Enforcement period.* The regulated area described in paragraph (a) will be enforced from 7 a.m. through 5 p.m. on September 28, 2019.

(c) *Special local regulations.* (1) The Coast Guard will patrol the regatta area under the direction of the Captain of the Port Detroit (COTP), or a designated representative. A designated representative may be a Coast Guard Patrol Commander.

(2) Vessels desiring to transit the regulated area may do so only with prior approval of the COTP or a designated representative and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the COTP or a designated representative. The rules contained in the above two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. Commercial vessels will have right-of-way over event participants and event safety craft. The races will stop for oncoming freighter or commercial traffic and will resume after the vessel has completed its passage through the regulated area. COTP or a designated representative may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the COTP or a designated representative shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the COTP or a designated representative. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The COTP or a designated representative may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The COTP or a designated representative may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(3) Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the COTP. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on VHF–FM Marine Channel 16 by the call sign ''Coast Guard Patrol Commander.''

Dated: August 20, 2019.

Meridena D. Kauffman,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2019–18282 Filed 8–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0590]

RIN 1625–AA00

Safety Zone; Los Angeles Fleet Week, San Pedro, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone in the Port of Los Angeles Main Channel, in support of the U. S. Coast Guard aviation and waterborne asset demonstration for Los Angeles Fleet Week. This action is necessary to provide for the safety of life on these navigable waters in the area of the Coast Guard air and water demonstration and to protect the high concentration of people attending the event. This regulation would prohibit vessels from entering into, transiting through, or remaining within the designated area unless specifically authorized by the Captain of the Port, Sector Los Angeles—Long Beach, or a designated representative.

DATES: This rule is effective from 10:00 a.m. August 31, 2019 through 4:00 p.m. on September 2, 2019. The rule will be enforced from 10:00 a.m. to 4:00 p.m. each day.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0590 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 rulemaking, call or email MST1 Benjamin Martin, Waterways Management Branch, U.S. Coast Guard Sector Los Angeles—Long Beach;

telephone (310) 521–3860, email *D11-SMB-SectorLALB-WWM@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable due to the lack of sufficient time to provide a reasonable comment period and consider those comments before issuing the rule and establishing the safety zone by August 31, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to address potentially hazardous conditions associated with high-speed maneuvers from waterborne vessels and aircraft for a search and rescue demonstration.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Los Angeles—Long Beach (COTP) has determined the navigational safety will be affected by the potentially hazardous conditions associated with event safety due to the expected high-speed maneuvers from waterborne vessels and aircraft for a search and rescue demonstration along the main shipping channel of the nation's most economically vital port complex. For these reasons the Coast Guard believes that a safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners, in the Port of Los Angeles.

IV. Discussion of the Rule

This rule establishes a temporary security zone from 10 a.m. through 4 p.m. from August 31, 2019 to September 2, 2019, encompassing all navigable waters from the surface to the sea floor consisting of a line connecting the following coordinates: 33°44.386′ N 118°16.658′ W, 33°44.370′ N 118°16.545′ W, 33°44.858′ N 118°162.86′ W, 33°44.897′ N 118°16.399′ W. All coordinates displayed are referenced by North American Datum of 1983, World Geodetic System, 1984.

No vessel or person is permitted to operate in the safety zone without obtaining permission from COTP or the COTP's designated representative. A designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the security zone. To seek permission to enter, hail Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or 310–521–3801. Upon being hailed by a Coast Guard vessel or designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

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

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (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

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs, directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This regulatory action determination is based on the size, location, duration of the safety zone. Commercial vessel traffic will be temporarily impacted by this rule, due to its impact a designated area of the of Los Angles main channel in the vicinity of the Port of Los Angeles between Berth's 84–93A. The Coast Guard and Inter Agency Unified Command will establish communications with the LA Pilots and Vessel Traffic Service/Marine Exchange to coordinate and mitigate all inbound and outbound commercial and recreational traffic movements through the 0.12 square mile safety 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 security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 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 E.O. 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing a 0.12 square mile area around the Los Angeles Fleet Week events, in the Port of Los Angeles between Berth's 84–93A, effective from 10 a.m. to 4 p.m. each day from August 31, 2019 through September 2, 2019. Such actions are categorically excluded from further review under paragraph 60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. An environmental analysis checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–0590 to read as follows:

§ 165.T11–0590 Safety Zone; Los Angeles Fleet Week, San Pedro, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor in an around bound by the following coordinates; 33°44.386′ N 118°16.658′ W, 33°44.370′ N 118°16.545′ W, 33°44.858′ N 118°162.86′ W, 33°44.897′ N 118°16.399′ W. All coordinates displayed are referenced by North American Datum of 1983, World Geodetic System, 1984.

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

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

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

(3) Upon being hailed by a Coast Guard vessel or his designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(d) *Enforcement period.* The temporary safety zone will be enforced each day from 10 a.m. to 4 p.m. from August 31, 2019 to September 2, 2019.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone Local Notices to Mariners.

Dated: August 16, 2019.

R.E. Ore,

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

[FR Doc. 2019–18396 Filed 8–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0626]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan

including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal and South Branch of the Chicago River between mile marker 319 and mile marker 322 from 7 a.m. through 2 p.m. on October 27, 2019. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after the Race4Row rowing event. During the enforcement period listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. through 2 p.m. on October 27, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Tiziana Garner, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone on all waters of the Chicago Sanitary and Ship Canal and South Branch of the Chicago River between mile marker 319 and mile marker 322. Enforcement will occur from 7 a.m. through 2 p.m. on October 27, 2019. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Lake Michigan or a designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan, or an on-scene representative.

This notice of enforcement is issued under the authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Captain of the Port Lake Michigan will also provide notice through other means, which will include Broadcast Notice to Mariners, Local Notice to Mariners, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port Lake Michigan may notify representatives from the maritime industry through telephonic and email notifications. If the Captain of the Port or a designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via Channel 16 or at (414) 747–7182.

Dated: August 21, 2019.

Thomas J. Stuhlreyer,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2019–18281 Filed 8–26–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0365; FRL–9998–83–Region 9]

Air Plan Approval; Nevada; Revisions to Clark County Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to conditionally approve a revision to the State of Nevada's state implementation plan (SIP) for Clark County. The revision consists of an update to certain elements of the maintenance plan for the Clark County air quality planning area for the 1997 8-hour ozone national ambient air quality standards (NAAQS), including the emissions inventories, maintenance demonstration, and motor vehicle emissions budgets. The EPA is conditionally approving the SIP revision because the SIP it continues to provide for maintenance of the 1997 ozone NAAQS; upon fulfillment of certain commitments, it will not interfere with attainment or reasonable further progress of the other NAAQS; and the budgets meet the applicable transportation conformity requirements. The approval is conditional because it is based on commitments to submit an additional SIP revision to reduce the safety margin allocations for the budgets within one year of this final conditional approval.

DATES: This rule is effective on September 26, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0365, at *https://www.regulations.gov.* All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone at (775) 434–8176 or by email at *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary information section is arranged as follows:

Table of Contents

I. Summary of the Proposed Action
II. Public Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Summary of the Proposed Action

On July 11, 2019 (84 FR 33035), under section 110(k)(4) of the Clean Air Act (CAA or ''Act''), the EPA proposed to conditionally approve a SIP revision titled ''Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan: Clark County, Nevada'' (October 2018) (herein, referred to as the ''2018 Ozone Maintenance Plan Revision''), submitted by the Nevada Division of Environmental Protection (NDEP) on October 31, 2018. The 2018 Ozone Maintenance Plan Revision updates certain elements of the maintenance plan for Clark County for the 1997 ozone NAAQS, including the attainment inventory, the maintenance demonstration and the motor vehicle emissions budgets (''budgets''). The updated budgets replace Clark County's existing budgets for the 1997 ozone NAAQS, and the previously-approved budgets will no longer be applicable for transportation conformity purposes on the publication date of this final conditional approval in the **Federal Register**.[1] We proposed a conditional approval based on commitments from NDEP and the Clark County Department of Air Quality (DAQ) to submit a SIP revision within one year of final

[1] 40 CFR 93.118(f)(2)(v).

conditional approval.[2] The purpose of the future SIP revision is to reduce the safety margin allocations in the budgets to ensure that the 2018 Ozone Maintenance Plan Revision, when revised to reduce the safety margin allocations, will not interfere with reasonable further progress or attainment of the 2008 and 2015 ozone NAAQS.

For more information on the background for this action, including a description of the ozone NAAQS, the ozone area designations for Clark County, the 2011 Ozone Maintenance Plan and the EPA's MOVES emissions model, and the rationale for conditional approval of the 2018 Ozone Maintenance Plan Revision, please see our July 11, 2019 proposed rule.

II. Public Comments

The public comment period on the proposed rule opened on July 11, 2019, the date of its publication in the **Federal Register**, and closed on August 12, 2019. During this period, the EPA received no comments.

III. Final Action

For the reasons discussed in our July 11, 2019 proposed rule and summarized above, the EPA is taking final action under CAA section 110(k)(4) to conditionally approve the 2018 Ozone Maintenance Plan Revision submitted by NDEP on October 31, 2018, as a revision of the Clark County portion of the Nevada SIP. In so doing, we find that the 2011 Ozone Maintenance Plan, as revised by the updated attainment inventory and maintenance demonstration in the 2018 Ozone Maintenance Plan Revision, continues to provide for maintenance of the 1997 ozone NAAQS, and upon fulfillment of the commitments made by NDEP and Clark County DAQ to reduce the safety margin allocations for the budgets, will not interfere with reasonable further progress or attainment of the other NAAQS in Clark County. In conditionally approving the 2018 Ozone Maintenance Plan Revision, the EPA is also finding adequate and conditionally approving the updated oxides of nitrogen (NO_X) and volatile organic compound (VOC) budgets for 2008, 2015, and 2022 for the 1997 ozone NAAQS (shown in Table 1) based on our conclusion that the updated budgets meet the applicable transportation conformity requirements.

TABLE 1—OZONE MOTOR VEHICLE EMISSION BUDGETS

[Average summer weekday, tons per day]

Year	2018 Ozone maintenance plan revision	
	NO_X	VOC
2008	89.50	42.46
2015	90.92	53.94
2022	86.74	52.96

Source: 2018 Ozone Maintenance Plan Revision, Table 3–1.

The approval of the 2018 Ozone Maintenance Plan Revision is conditional because it is based on commitments from NDEP and the Clark County DAQ to submit a SIP revision within one year of final conditional approval.[3] The purpose of the future SIP revision is to reduce the safety margin allocations to the budgets to ensure that the 2018 Ozone Maintenance Plan Revision, when revised to reduce the safety margin allocations, will not interfere with reasonable further progress or attainment of the 2008 and 2015 ozone NAAQS.

Lastly, the revised budgets in Table 1 replace the existing approved budgets from the 2011 Ozone Maintenance Plan; the Regional Transportation Commission and the U.S. Department of Transportation must use these revised budgets for future transportation conformity determinations.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a

[2] Letter dated June 14, 2019, from Jodi Bechtel, Assistant Director, Clark County DAQ, to Greg Lovato, Administrator, NDEP; and letter dated June 21, 2019, from Greg Lovato, Administrator, NDEP, to Elizabeth Adams, Director, Air Division, EPA Region IX.

[3] Id.

''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 15, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart DD—Nevada

■ 2. In § 52.1470(e), the table is amended by adding an entry for ''Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan: Clark County, Nevada (October 2018)'' after the entry for ''Ozone Redesignation Request and Maintenance Plan, Clark County, Nevada (March 2011)'' to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Air Quality Implementation Plan for the State of Nevada [1]				
* *	* *		*	* *
Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan: Clark County, Nevada (October 2018).	Clark County, Nevada: That portion of Clark County that lies in hydrogeographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218, but excluding the Moapa River Indian Reservation and the Fort Mohave Indian Reservation.	10/31/18	[INSERT **Federal Register** CITATION], 8/27/2019.	Conditional approval of revised emission inventory and budgets. Includes a State commitment to revise the budgets within one year.
* *	* *		*	* *
* *	* *		*	* *

[1] The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

■ 3. Add § 52.1475 to read as follows:

§ 52.1475 Identification of plan—conditional approval.

(a) The EPA is conditionally approving the SIP revision titled ''Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan: Clark County, Nevada (October 2018).'' The conditional approval is based on a commitment from the Clark County Department of Air Quality (DAQ) in a letter dated June 14, 2019, and a commitment from the Nevada Division of Environmental Protection (NDEP) dated June 21, 2019, to submit certain revised motor vehicle emissions budgets as a SIP revision to the EPA within one year of the effective date of the final conditional approval. If the Clark County DAQ or NDEP fail to meet their commitments within one year of the effective date of the final conditional approval, the conditional approval is treated as a disapproval.

(b) [Reserved]

[FR Doc. 2019–18335 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0105; FRL–9998–76–Region 9]

Air Plan Approval; Arizona; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from graphic arts and from coating of wood furniture and fixtures. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on September 26, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0105. All documents in the docket are listed on

the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Nicole Law or Robert Schwartz, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4126 or (415) 972–3286, *law.nicole@epa.gov* or *schwartz.robert@epa.gov.*

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

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I. Proposed Action

On June 10, 2019 (84 FR 26804), the EPA proposed to approve the following rules into the Arizona SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
MCAQD	337	Graphic Arts	08/17/2011	01/15/2014
MCAQD	342	Coating Wood Furniture and Fixtures	11/02/2016	06/22/2017

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 this period, we received one comment. This comment generally expressed support for the EPA's proposed action. The commenter also stated that ''the exception in the SIP to exempt Indian reservation land and areas where the EPA does not have jurisdiction is a concern.''

We understand the comment to refer to the EPA's discussion of Executive Order 13175, specifically, the EPA's statement that ''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.'' The EPA typically uses such statements in actions regarding state SIP submittals to explain the non-applicability of the SIP on tribal lands. The State of Arizona submitted the rules in this action to apply only on lands where the State and relevant local agency have jurisdiction. The commenter's concerns regarding the inapplicability of the SIP in areas where the EPA or an Indian tribe has jurisdiction does not bear upon whether the rules that are the subject of our action meet the applicable requirements for approval of a SIP submission. Therefore, we do not find that the comment provides a basis for the EPA to change its assessment of the submitted rules or our proposal to approve them.

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 Arizona SIP.

IV. 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 MCAQD rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of this final rulemaking, and will be incorporated by reference in the next update to the SIP compilation.[1] 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).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as

[1] 62 FR 27968 (May 22, 1997).

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 14, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended in paragraph (c), Table 4, under the table headings ''Post-July 1988 Rule Codification'' and ''Regulation III—Control of Air Contaminants,'' by revising the entries for ''Rule 337'' and ''Rule 342'' to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Post-July 1988 Rule Codification				
*	*	*	*	*
Regulation III—Control of Air Contaminants				
*	*	*	*	*
Rule 337	Graphic Arts	August 17, 2011	August 27, 2019, [INSERT **Federal Register** CITATION].	Submitted on January 15, 2014.
*	*	*	*	*
Rule 342	Coating Wood Furniture and Fixtures.	November 2, 2016	August 27, 2019 [INSERT **Federal Register** CITATION].	Submitted on June 22, 2017.
*	*	*	*	*

* * * * *

[FR Doc. 2019–18336 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0526; FRL–9998–22]

Sedaxane; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of sedaxane in or on legume vegetables (dried or succulent), crop group 6. Syngenta Crop Protection, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 27, 2019. Objections and requests for hearings must be received on or before October 28, 2019, and must

be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0526, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0526 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 28, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0526, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 6, 2019 (84 FR 2115) (FRL–9987–08), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F8679) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greenboro, NC 27419. The petition requested that 40 CFR 180.665 be amended by establishing a tolerance for residues resulting from seed treatment uses of the fungicide sedaxane, in or on legume vegetables (dried or succulent), crop group 6 at 0.01 parts per million (ppm) and to remove the existing tolerances for soybean, seed at 0.01 ppm and pea and bean, dried shelled, except soybean, subgroup 6C at 0.01 ppm upon establishment of the group 6 tolerance. That document referenced a summary of the petition prepared by Syngenta, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The main target tissue for sedaxane is the liver. Sedaxane also caused thyroid hypertrophy/hyperplasia in male rats. In the acute neurotoxicity (ACN) and sub-chronic neurotoxicity (SCN) studies, sedaxane caused decreased activity, muscle tone, rearing and grip strength; however, no adverse histopathology was observed, and EPA has concluded that there is low concern for neurotoxicity.

In the rat, no adverse effects in fetuses were seen in developmental toxicity studies at maternally toxic doses. In the rabbit, fetal toxicity was observed at the same doses as the dams. Offspring effects in the rat reproduction study occurred at the same doses causing parental effects.

The available data show evidence of liver tumors (in male rats and mice), thyroid tumors (in male rats), and uterine tumors (in female rats) resulting from exposure to sedaxane. Based on a weight of evidence of the available data, a constitutive androstane receptor/pregnane-X receptor (CAR/PXR)-mediated mitogenic mode-of action (MOA) was established for liver tumors in male mice and rats and a liver-mediated altered thyroid hormone homeostasis MOA was established for thyroid tumors in male rats. At this time, a MOA for the uterine tumors has not been identified.

To quantitatively assess the carcinogenic potential of sedaxane, EPA has concluded that a non-linear approach (*i.e.,* reference dose (RfD)) is appropriate for the following reasons: (1) There is a clear understanding of the threshold (non-linear) doses associated with the key events in the established MOAs leading to liver and thyroid tumors in rodents, the key events occur only at doses that well exceed the chronic reference dose (0.11 mg/kg/day); (2) Sedaxane is not mutagenic or genotoxic; (3) The dose at which uterine tumors was observed is at 261 mg/kg/day, which greatly exceeds the chronic reference dose (0.11 mg/kg/day) being used to assess chronic exposure to sedaxane.

Sedaxane has low acute toxicity by the oral, dermal, and inhalation routes. It is not a dermal sensitizer, causes no skin irritation and only slight eye irritation.

Specific information on the studies received and the nature of the adverse effects caused by sedaxane as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of December 8, 2017 (82 FR 57867) (FRL–9970–04).

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for sedaxane used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of December 8, 2017 (82 FR 57867) (FRL–9970–04).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sedaxane, EPA considered exposure under the petitioned-for tolerances as well as all existing sedaxane tolerances in 40 CFR 180.665. EPA assessed dietary exposures from sedaxane in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for sedaxane. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) under the Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and the CDC under the National Health and Nutrition Examination Survey What We Eat in America (NHANES/WWEIA) 2003–2008. As to residue levels in food, EPA assumed tolerance-level residues for all commodities and 100% crop treated. Default processing factors were used with the exception of peanut butter which uses empirical processing data.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WEIA 2003–2008. As to residue levels in food, EPA assumed tolerance-level residues for all commodities and 100% crop treated (CT). Default processing factors were used with the exception of peanut butter which uses empirical processing data.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to sedaxane. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for sedaxane. Tolerance-level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sedaxane in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sedaxane. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of sedaxane for acute exposures are estimated to be 4.1 parts per billion (ppb) for surface water and 15.1 ppb for ground and for chronic exposures for non-cancer assessments are estimated to be 1.2 ppb for surface water and 13.0 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 15.1 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 13.0 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and

flea and tick control on pets). Sedaxane is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence for increased susceptibility following prenatal or post-natal exposures to sedaxane based on effects seen in developmental toxicity studies in rabbits or rats. In range-finding and definitive developmental toxicity studies in rats, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to sedaxane was observed. In these studies, there were no single-dose effects. There was no evidence of increased susceptibility in a 2-generation reproduction study in rats following prenatal or post-natal exposure to sedaxane. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproduction study. The dose-response relationship for the effects of concern is well characterized.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for sedaxane is complete.

ii. Given the available information, there is low concern that sedaxane is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. In the rat, no adverse effects in fetuses were seen in developmental toxicity studies at maternally toxic doses. In the rabbit, fetal toxicity was observed at the same doses as the dam (increased unossified sternebrae and 13th rudimentary ribs, a decrease in fetal weights of 9% and increased abortions). In the dam, at the same doses, the effects were decreased body weight, reduced food consumption, and decreased defecation. In reproduction studies, offspring effects occurred at the same doses causing parental effects; thus, there was no quantitative or qualitative increase in sensitivity in rat pups. The LOAELs and NOAELs for the developmental and reproduction studies were clearly defined. The NOAEL used for the acute dietary risk assessment (30 mg/kg/day), based on effects observed in the ACN study, is protective of the developmental and offspring effects seen in rabbits and rats with the NOAELs of 100–200 mg/kg/day. Based on these considerations, there are no residual uncertainties for pre-and/or post-natal susceptibility.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to sedaxane in drinking water. These assessments will not underestimate the exposure and risks posed by sedaxane.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sedaxane will occupy <1% of the aPAD for all infants (<1-year-old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sedaxane from food and water will utilize <1% of the cPAD for all population subgroups the population group receiving the greatest exposure. There are no residential uses for sedaxane.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no proposed or registered residential uses of sedaxane a short-term risk assessment was not performed. The chronic risk assessment is protective for any short-term exposures from food and drinking water.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no proposed or registered residential uses of sedaxane, an intermediate-term risk assessment was not performed. The chronic assessment is protective for any intermediate-term exposures from food and drinking water.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has concluded that using the nonlinear approach based on the chronic RfD will be protective of potential carcinogenicity. Because the chronic risk is below the Agency's level of concern, EPA concludes there is no aggregate cancer risk from exposure to sedaxane.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method is available to enforce the proposed tolerances for sedaxane in plant commodities. A modification of the Quick, Easy, Cheap, Effective, Rugged, and Safe (QuEChERS) method was developed for the determination of residues of sedaxane (as its isomers SYN508210 and SYN508211) in/on various crops. The sedaxane isomers (SYN508210 and SYN508211) are quantitatively determined by LC/MS/MS. The validated limit of quantitation (LOQ) reported in the method is 0.005 ppm for each sedaxane isomer.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for sedaxane in or on the legume vegetables crop grouping.

V. Conclusion

Therefore, tolerances are established for residues of sedaxane in or on vegetable, legume, group 6 at 0.01 ppm. In addition, the Agency is removing the existing tolerances for pea and bean, dried shelled, except soybean, subgroup 6C, and soybean seed as they are unnecessary upon the establishment of the group 6 tolerance.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 16, 2019.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.665, amend the table in paragraph (a) as follows:

■ i. Remove the entry for ''Pea and bean, dried shelled, except soybean, subgroup 6C''; and

■ ii. Add alphabetically the entry ''Vegetable, legume, group 6''.

The addition reads as follows:

§ 180.665 Sedaxane; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Vegetable, legume, group 6	0.01

* * * * *

[FR Doc. 2019–18366 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0095; FRL–9996–85]

Nitrapyrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of nitrapyrin in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 27, 2019. Objections and requests for hearings must be received on or before October 28, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0095, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0095 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 28, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0095, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 24, 2018 (83 FR 34968) (FRL–9980–31), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8645) by Interregional Research Project No. 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.350 be amended by establishing tolerances for residues of the nitrification inhibitor nitrapyrin (2-chloro-6-(trichloromethyl) pyridine) and its metabolite, 6-chloropicolinic acid (6–CPA), calculated as the stoichiometric equivalent of nitrapyrin, in or on citrus, dried pulp at 0.094 parts per million (ppm); citrus, oil at 0.37 ppm; fruit, citrus, group 10–10 at 0.03 ppm; leaf petiole vegetable subgroup 22B at 0.4 ppm; Vegetable, *brassica,* head and stem, group 5–16 at 0.07 ppm; vegetable, bulb, group 3–07 at 0.3 ppm; and vegetable, leafy, group 4–16 at 0.3 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what the petitioner requested, as authorized under FFDCA section 408(d)(4)(A)(i). EPA's explanation for those variations is contained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the

pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In oral studies, the liver is the target organ for nitrapyrin, and liver effects are evident in all species tested. Clear signs of hepatotoxicity (*i.e.,* marked changes in clinical chemistry in dogs, indicative of liver toxicity and histopathology in rats and mice, leading to malignant tumor formation in mice) are seen after repeated exposure. Nitrapyrin does not show qualitative or quantitative susceptibility in the rat or rabbit developmental studies or in the 2-generation reproduction study. The observed adverse effects (*e.g.,* delayed ossification and decreased fetal body weight in the developmental rat study and liver effects in pups in the rat reproduction study) occurred at the same doses as maternal toxicity. There is low concern for the altered motor activity seen after acute or subchronic exposure because: Clear no-observed adverse effect levels (NOAELs) and lowest-observed adverse effect levels (LOAELs) have been established; no corroborating gross pathological or neuropathological effects were found in any other study in the database; and the selected endpoints are protective of the observed effects.

Nitrapyrin is not mutagenic or immunotoxic, and no effects were observed in the subchronic dermal toxicity study in rabbits up to the limit dose. Nitrapyrin is classified as having ''suggestive'' evidence of carcinogenicity, based on liver adenomas and carcinomas in mice. This classification is supported by the following factors: (1) Liver tumors were not seen in the 2-year carcinogenicity study in rats; (2) The response is driven by benign adenomas; (3) Mutagenicity was ruled out as a mode of action; and (4) There are adequate data supporting the MOA of mitogenesis through activation CAR nuclear receptors in male mice but not in female mice. In addition, the chronic reference dose (0.03 mg/kg/day) is approximately 4000X lower than the dose at which tumors are seen in the female mouse. Therefore, quantification of cancer risk using a non-linear Reference Dose (RfD) approach adequately accounts for all chronic toxicity, including carcinogenicity that could result from exposure to nitrapyrin.

Specific information on the studies received and the nature of the adverse effects caused by nitrapyrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of November 30, 2017 (82 FR 56739) (FRL–9967–73).

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for nitrapyrin used for human risk assessment is discussed in Unit III.B of the final rule published in the **Federal Register** of November 30, 2017 (82 FR 56739) (FRL–9967–73).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to nitrapyrin, EPA considered exposure under the petitioned-for tolerances as well as all existing nitrapyrin tolerances in 40 CFR 180.350. EPA assessed dietary exposures from nitrapyrin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for nitrapyrin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America. (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance-level residues and 100 PCT.

iii. *Cancer.* Based on the data cited in Unit III.A., EPA has concluded that quantification of cancer risk using a nonlinear RfD approach adequately accounts for all chronic toxicity, including carcinogenicity that could result from exposure to nitrapyrin. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *Chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for nitrapyrin. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for nitrapyrin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of nitrapyrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier II pesticide water calculator (PWC), which incorporates the Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of nitrapyrin residues of concern for acute exposures are estimated to be 51 parts per billion (ppb) for surface water and 76 ppb for ground water, and for chronic exposures for non-cancer assessments are estimated to be 15 ppb for surface water and 67 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 76 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 67 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Nitrapyrin is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found nitrapyrin to share a common mechanism of toxicity with any other substances, and nitrapyrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that nitrapyrin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There are adequate pre- and/or post-natal toxicity studies that do not show quantitative susceptibility in the rabbit or rat developmental studies or in the two-generation reproduction study. In the developmental toxicity in the rabbit, an increased incidence of crooked hyoid bones was seen at the highest dose tested. This effect is considered to be treatment-related but not adverse. In the rat developmental study, developmental toxicity (delayed ossification and decreased fetal body weight) occurred at the same dose as maternal toxicity (reduced body weight/weight gain and reduced food consumption). Toxic effects in the 2-generation reproduction study also occurred at the same dose in both parental animals and the offspring and included increased liver weights (parental M and F; both generations), enlarged livers in F2 pups (M and F), and hepatic vacuolation consistent with fatty changes in parental and offspring animals (both sexes and both generations). Similarly, gross pathological or neuropathological findings in the neurotoxicity studies were negative.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for nitrapyrin is complete.

ii. An acceptable acute neurotoxicity study and an acceptable subchronic neurotoxicity study are available for nitrapyrin. Acutely, nitrapyrin induced tremors and other functional observation battery effects (*i.e.,* slight gait incoordination, palpebral closure and perineal fecal staining) at the high dose (400 mg/kg) only. Decreased motor activity was seen in both sexes at 400 mg/kg and in females at 80 mg/kg. In contrast, increased motor activity was observed in the subchronic neurotoxicity study in female rats but only at high doses (≥500 mg/kg/day). However, concern is low since: (1) There are clear NOAELs/LOAELs; (2) there are no corroborating gross pathological or neuropathological findings; (3) there was no evidence of neurotoxicity in other studies in the database; and (4) the selected endpoints are protective of the observed effects.

iii. There is no evidence that nitrapyrin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. Effects on the offspring were either not treatment-related or occurred only at the same parental dose.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to nitrapyrin in drinking water. These assessments will not underestimate the exposure and risks posed by nitrapyrin.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to nitrapyrin will occupy 8.5% of the aPAD for all infants (less than 1-year old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to nitrapyrin from

food and water will utilize 17% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for nitrapyrin.

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

However, nitrapyrin is not registered for, or proposed for, any residential uses. Therefore, because there is no short-term or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for nitrapyrin.

4. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., EPA considers the chronic aggregate risk assessment to be protective of any aggregate cancer risk. As there is no chronic risk of concern, EPA does not expect any cancer risk to the U.S. population from aggregate exposure to nitrapyrin.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatograph/electron capture detector) is available to enforce the tolerance expression. Seven analytical methods are available in Volume II of the Pesticide Analytical Manual (PAM ii—Pesticide Reg. Sec. 180.350) for tolerance enforcement for nitrapyrin and/or for metabolite 6–CPA.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for nitrapyrin.

C. Revisions to Petitioned-For Tolerances

EPA is establishing tolerances for residues of nitrapyrin at different levels than requested in the petition for most commodities. For fruit, citrus, group 10–10, dried pulp and fruit, citrus, group 10–10, oil, EPA established the tolerances based on the processing study and highest average field trial residue for the raw agricultural commodity lemon. This leads to higher tolerances (0.5 ppm for fruit, citrus, group 10–10, dried pulp and 2 ppm for fruit, citrus, group 10–10, oil) than those proposed by petitioner (0.094 ppm and 0.37 ppm, respectively). EPA also corrected the commodity names for these commodities.

Based on the residue chemistry data and the Organization for Economic Co-Operation and Development (OECD) tolerance-calculation procedure, EPA is establishing different tolerances for fruit, citrus, group 10–10; leaf petiole vegetable subgroup 22B; vegetable, *Brassica,* head and stem, group 5–16; and vegetable, leafy, group 4–16, because the tolerance values proposed by the petitioner do not include the combined residues of nitrapyrin and its metabolite 6–CPA.

In addition, EPA is revising the tolerance expression in § 180.350(a) to correctly identify nitrapyrin as a nitrification inhibitor rather than the current identification as an insecticide. The rest of the tolerance expression remains the same. The revised tolerance expression is:

(a) *General.* Tolerances are established for residues of the nitrification inhibitor nitrapyrin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of nitrapyrin (2-chloro-6-(trichloromethyl) pyridine) and its 6–CPA metabolite (6-chloro-picolinic acid), calculated as the stoichiometric equivalent of nitrapyrin, in or on the commodity.

V. Conclusion

Therefore, tolerances are established for residues of nitrapyrin, by measuring only the sum of nitrapyrin (2-chloro-6-(trichloromethyl) pyridine) and its 6–CPA (6-chloropicolinic acid) metabolite, calculated as the stoichiometric equivalent of nitrapyrin, in or on fruit, citrus, group 10–10 at 0.06 ppm; fruit, citrus, group 10–10, dried pulp at 0.5 ppm; fruit, citrus, group 10–10, oil at 2 ppm; leaf petiole vegetable subgroup 22B at 0.5 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 0.1 ppm; vegetable, bulb, group 3–07 at 0.3 ppm; and vegetable, leafy, group 4–16 at 0.4 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and

responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 8, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.350, paragraph (a):

■ a. Revise the introductory text.

■ b. Add alphabetically the entries for ''Fruit, citrus, group 10–10''; ''Fruit, citrus, group 10–10, dried pulp''; ''Fruit, citrus, group 10–10, oil''; ''Leaf petiole vegetable subgroup 22B''; ''Vegetable, *Brassica,* head and stem, group 5–16''; ''Vegetable, bulb, group 3–07''; and ''Vegetable, leafy, group 4–16'' to the table.

The revision and additions read as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nitrification inhibitor nitrapyrin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of nitrapyrin (2-chloro-6-(trichloromethyl) pyridine) and its 6–CPA metabolite (6-chloro-picolinic acid), calculated as the stoichiometric equivalent of nitrapyrin, in or on the commodity:

Commodity	Parts per million
* * * * *	
Fruit, citrus, group 10–10	0.06
Fruit, citrus, group 10–10, dried pulp	0.5
Fruit, citrus, group 10–10, oil	2
Leaf petiole vegetable subgroup 22B	0.5
* * * * *	
Vegetable, *Brassica,* head and stem, group 5–16	0.1
Vegetable, bulb, group 3–07	0.3
Vegetable, leafy, group 4–16	0.4
* * * * *	

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[FR Doc. 2019–18382 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0093; FRL–9996–95]

Oxirane, 2-methyl-, Polymer With Oxirane, Monoundecyl Ether, Branched and Linear; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, monoundecyl ether, branched and linear (CAS Reg. No. 2222805–23–2) when used as an inert ingredient in a pesticide chemical formulation. Exponent, Inc. on behalf of Clariant Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl-, polymer with oxirane, monoundecyl ether, branched and linear.

DATES: This regulation is effective August 27, 2019. Objections and requests for hearings must be received on or before October 28, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0093, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0093 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 28, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0093, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of August 5, 2009 (74 FR 38935) (FRL–8430–1), EPA issued a final rule, announcing the establishment of a tolerance exemption pursuant to a pesticide petition (PP 9E7534) by The Joint Inerts Task Force, Cluster Support Team 1 (CST 1), c/o CropLife America, 1156 15th Street NW, Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910, 180.930, 180.940(a) and 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of a group of substances known as α-alkyl-ω-hydroxypoly(oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of 6 carbons, herein referred to in this document as AAA.

The current petition seeks to expand the exemptions for AAA by adding additional CAS Reg. Nos. In the **Federal Register** of May 13, 2019 (84 FR 20843) (FRL–9991–91), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11254) by Exponent Inc. on behalf of Clariant Corporation, Suite 1100, 1150 Connecticut Avenue NW, Washington DC 20036. The petition requested that 40 CFR 180.910, 180.930, 180.940(a) and 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, monoundecyl ether, branched and linear (CAS Reg. No. 2222805–23–2). That document referenced a summary of the petition prepared by Exponent, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has confirmed that the requested CAS Reg. No. is acceptable for consideration under the currently approved descriptor. This determination is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document ''*Alkyl Alcohol Alkoxylates (AAA–JITF CST 1 Inert Ingredient), Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance under 40 CFR 180.960 when used as an Inert Ingredient in Pesticide Formulations*'' in docket ID number EPA–HQ–OPP–2009–0145.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that

occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by AAA as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of August 5, 2009 (74 FR 38935) (FRL–8430–1).

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for AAA used for human risk assessment is discussed in Unit IV of the final rule published in the **Federal Register** of August 5, 2009 (74 FR 38938) (FRL–8430–1).

C. Exposure Assessment

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

i. *Acute exposure.* No adverse effects attributable to a single exposure of the AAAs was seen in the toxicity databases. Therefore, acute dietary risk assessments for the AAAs are not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994 -1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII).

iii. *Cancer.* The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. The AAAs are not expected to be carcinogenic. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for the AAAs in drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to nonoccupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The AAAs may be used in inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing the AAAs as inert ingredients.

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

EPA has not found AAA to share a common mechanism of toxicity with any other substances, and AAA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that AAA does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* In the case of the lower weight AAA surfactants, there was no evidence of increased susceptibility to the offspring of rats following prenatal and postnatal exposure in the reproductive/ developmental screening studies on several representative AAA surfactants. Decreased litter size and increased post-implantation loss were observed in one OPPTS Harmonized Guideline 870.3550 reproduction/developmental toxicity screening study at 470 mg/kg/day where maternal/paternal toxicity was manifested as one maternal death (GD

22), decreased body weight, bodyweight gain and food consumption and clinical signs (ptosis and hypoactivity) and microscopic changes in the testes (atrophy) and epididymides (increased intraluminal exfoliated spermatogenic cells) and dilated seminiferous tubules at the same dose (470 mg/kg/day). The maternal and offspring toxicity NOAEL was 168 mg/kg/day. The offspring toxicity in the OPPTS Harmonized Test Guideline 870.3650 study was manifested in the presence of more severe maternal toxicity (deaths), therefore, EPA concluded that there is no evidence of increased susceptibility in this study. In addition, there was no evidence of increased susceptibility in other submitted studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for the lower weight AAAs. (As discussed earlier, given the low toxicological concerns with the high weight AAAs, a safety factor analysis is unnecessary).

E. Aggregate Risks and Determination of Safety Determination of Safety Section

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

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

2. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure the chronic dietary exposure from food and water to the AAAs is 11% of the cPAD for the U.S. population and 37% of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup.

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

AAAs are used as inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to the AAAs. EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in aggregate MOEs of 110 for both adult males and females. Adult residential exposure combines high end indoor inhalation handler exposure with a high-end post application to pet exposures. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 110 for children. Children's residential exposure includes total combined pet exposures. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

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

The AAAs are used as inert ingredients in pesticide products that are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to the AAAs. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 230 for both adult males and females, respectively. Adult residential exposure includes high-end post application dermal exposure from contact with treated pets. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 110 for children. Children's residential exposure includes total combined pet exposure. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to the AAAs.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to residues of the lower weight AAAs. For the high molecular weight AAAs under 40 CFR 180.960. Since AAA conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to residues of the high molecular weight AAAs.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for AAAs.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of the lower molecular weight α-alkyl-ω-hydroxypoly(oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of 6 carbons, including oxirane, 2-methyl-, polymer with oxirane, monoundecyl ether, branched and linear (CAS Reg. No. 2222805–23–2) when used as an inert ingredient in pesticide formulations applied to pre- and post-harvest, applied to livestock, and used in antimicrobial formulations under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940(a). In addition, an

exemption from the requirement of a tolerance is established for residues of the larger molecular weight compounds of a-alkyl-w-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of 6 carbons, including oxirane, 2-methyl-, polymer with oxirane, monoundecyl ether, branched and linear (CAS Reg. No. 2222805–23–2) under 40 CFR 180.960.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 16, 2019.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.910, revise the inert ingredients ''α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons'' in the table to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. Nos.: 9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61723–78–2; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8; 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2; 2222805–23–2).	.....	Surfactants, related adjuvants of surfactants
* * * * * * *		

■ 3. In § 180.930, revise the inert ingredients ''α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons'' in the table to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * *		*
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. Nos.: 9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61723–78–2; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8; 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2; 2222805–23–2).	.....	Surfactants, related adjuvants of surfactants
* * * * * *		*

■ 4. In § 180.940, revise the inert ingredients ''α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons'' in the table in paragraph (a) to read as follows:

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

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * * * * *		**
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons.	9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61723–78–2; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8; 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2; 2222805–23–2.	None
* * * * * *		*

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■ 5. In § 180.960, revise the inert ingredients ''α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100'' in the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
*	*
α-Alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100.	9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61723–78–2; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8; 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2; 2222805–23–2
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[FR Doc. 2019–18362 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0088; FRL–9997–10]

Emamectin Benzoate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of emamectin benzoate (referred to as emamectin in this document) in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project No. 4 (IR–4) and Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 27, 2019. Objections and requests for hearings must be received on or before October 28, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0088, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0088 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 28, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0088, by one of the following methods:

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of July 24, 2018 (83 FR 34968) (FRL–9980–31), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8644) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of emamectin, including its metabolites and degradates in or on the raw agricultural commodities: Artichoke, globe at 0.06 parts per million (ppm), *Brassica,* leafy greens, subgroup 4–16B at 0.050 ppm, Celtuce at 0.100 ppm, Cherry subgroup 12–12A at 0.10 ppm, Fennel, Florence at 0.100 ppm, Fruit, pome, group 11–10 at 0.025 ppm, Herb subgroup 19A at 0.50 ppm, Kohlrabi at 0.050 ppm, Leafy greens subgroup 4–16A at 0.100 ppm, Leaf petiole vegetable subgroup 22B at 0.100 ppm, Nut, tree, group 14–12 at 0.02 ppm, Vegetable, *brassica,* head and stem, group 5–16 at 0.050 ppm, and Vegetable, fruiting, group 8–10 at 0.020 ppm. The petition also proposed to amend 40 CFR 180.505 by removing the tolerances for residues of emamectin, including its metabolites and degradates, in or on the raw agricultural commodities: Fruit, pome, group 11 at 0.025 ppm, Nut, tree, group 14 at 0.02 ppm, Pistachio at 0.02 ppm, Turnip, greens at 0.050 ppm, Vegetable, leafy, except *brassica,* group 4 at 0.100 ppm, Vegetable, brassica, leafy, group 5 at 0.050 ppm, and Vegetable fruiting, group 8 at 0.020 ppm.

That document referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In the **Federal Register** of August 24, 2018 (83 FR 42818) (FRL–9982–37), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8640) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of emamectin, including its metabolites and degradates in or on vegetable, cucurbit, group 9 at 0.03 ppm. That document referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what the petitioner requested, as authorized under FFDCA section 408(d)(4)(A)(i). EPA's explanation for those variations are contained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The main target organ for emamectin is the nervous system; treatment-related clinical signs (tremors, ptosis, ataxia, mydriasis, and hunched posture) and neuropathology (neuronal degeneration in the brain and in peripheral nerves and muscle fiber degeneration) were found in most of the emamectin studies in rats, dogs, rabbits, and mice. Decreased body weight was also a frequent finding.

Integral to the dose-response assessment in mammals for this class of compounds is the role of P-glycoprotein (P-gp) in target tissues. P-gp is a member of the adenosine triphosphate (ATP)

binding cassette transporter protein class/group, which reside in the plasma membrane and function as a transmembrane efflux pump, moving xenobiotics from the intracellular to the extracellular domain. P-gp is found in the canalicular surface of hepatocytes, the apical surface of proximal tubular cells in the kidneys, brush border surface of enterocytes, luminal surface of blood capillaries of the brain (blood brain barrier), placenta, ovaries, and the testes. As an efflux transporter, P-gp acts as a protective barrier to keep xenobiotics out of the body by excreting them into bile, urine, and intestinal lumen, and prevents accumulation of these compounds in the brain and gonads, as well as in the fetus. Therefore, test animals with genetic polymorphisms that compromise P-gp expression are particularly susceptible to emamectin and abamectin induced neurotoxicity.

In this connection, some CF–1 mice have a polymorphism for the gene encoding P-gp and are either devoid (homozygous) or have diminished (heterozygous) levels of P-gp. These mice are found to be uniquely sensitive to the neurotoxic effects of emamectin and abamectin. In addition, the neonatal rat is also particularly sensitive to emamectin and abamectin as P-gp is undetectable in the neonatal rat brain. The first detection of P-gp is on post-natal day (PND) 7 and does not reach adult levels until approximately PND 28. As shown in the reproductive and DNT studies, neonatal rats are sensitive to the effects of abamectin-induced pup body weight reductions and death. In contrast, in the developing human fetus, the presence of P-gp was found as early as 22 weeks of gestation. Based on the difference in the ontogeny of P-gp in neonatal rats and human newborns, the Agency does not believe that the early post-natal findings in the rat are relevant to human newborns or young children, at this time.

The human multidrug resistance (*MDR–1*) gene encoding P-gp and polymorphism of *MDR–1* gene are well studied. The literature data are inconclusive with respect to the functional significance of the genetic variance in P-gp in humans. Currently, the reported cases of polymorphism of the *MDR–1* gene in human populations have not been shown to result in a loss of P-gp function similar to that found in CF–1 mice. Given the ontogeny of P-gp and the lack of convincing evidence from the literature on human polymorphism of *MDR–1* gene resulting in diminished P-gp function, the Agency considers the results of the studies with CF–1 mice not relevant for human health risk assessment. Therefore, the Agency is using results from toxicological studies conducted in the species that do not have diminished P-gp function for selecting toxicity endpoints and PODs for risk assessment. Among the test animals with fully functional P-gp, the beagle dog is the most sensitive species.

Emamectin did not elicit increased fetal sensitivity in developmental toxicity studies in rats and rabbits. In the reproductive toxicity study, emamectin produced neuronal degeneration in the brain and spinal in parental and offspring animals at similar dose level (1.8 mg/kg/day), and no increase in quantitative sensitivity was found in the pup with respect to the neurotoxicity. However, in the developmental neurotoxicity study in rats, there was an increase in both quantitative and qualitative sensitivity in the pups as no adverse effect was seen at the highest dose tested (3.6/2.5 mg/kg/day) in parental animals, while at 0.6 mg/kg/day, the pups showed a dose-related decrease in open field motor activity at post-natal day 17. Body tremors, hind-limb extension, and auditory startle were also observed in the high dose pups (3.6/2.5 mg/kg/day).

The carcinogenicity and mutagenicity studies provide no indication that emamectin is carcinogenic or mutagenic. Emamectin is classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by emamectin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Emamectin (Emamectin Benzoate). Human Health Risk Assessment in Support of Establishing Permanent Tolerances on Globe Artichoke, Cherry Subgroup 12–12A, Herb Subgroup 19A, and Crop Group Conversions and Expansions to include Pome Fruit Group 11–10, Tree Nut Group 14–12, Brassica Vegetable Head and Stem Group 5–16, Brassica Leafy Greens Subgroup 4–16B, Leafy Greens Subgroup 4–16A, Leaf Petiole Vegetable Subgroup 22B, Fruiting Vegetable Group 8–10, and individual tolerances for Florence Fennel, Kohlrabi, Celtuce, and Cucurbit Vegetables Group 9*'' on pages 42–48 in docket ID number EPA–HQ–OPP–2018–0088.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for emamectin used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR EMAMECTIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Dietary, all durations (General population including infants and children).	NOAEL = 0.25 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.0025 mg/kg/day. aPAD = 0.0025 mg/kg/day Chronic RfD = 0.0025 mg/kg/day. cPAD = 0.0025 mg/kg/day.	Subchronic and chronic oral toxicity studies in dogs. Subchronic LOAEL = 0.5 mg/kg/day based skeletal muscle atrophy and white matter multifocal degeneration in the brains of both sexes and white matter multifocal degeneration in the spinal cords of males.
	.....	.....	Chronic LOAEL=0.5 mg/kg/day based on axonal degeneration in the pons, medulla, and peripheral nerves (sciatic, sural, and tibial); whole body tremors; stiffness of the hind legs, spinal cord axonal degeneration, and muscle fiber degeneration.
Cancer (Oral, dermal, inhalation)	Classification: Not Likely to be carcinogenic to humans based on the absence of significant increase in tumor incidence in two adequate rodent carcinogenicity studies		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to emamectin, EPA considered exposure under the petitioned-for tolerances as well as all existing emamectin tolerances in 40 CFR 180.505. EPA assessed dietary exposures from emamectin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for emamectin. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, a refined acute assessment was conducted. The assessment relied upon percent crop treated (PCT) data, and a combination of monitoring data from the Pesticide Data Program (PDP) and field trial data. For hog meat, a tolerance level residue was assumed. For all other livestock commodities, anticipated residue values were used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, a refined chronic assessment was conducted. The assessment relied upon the same data as above, except for using mean field trial data for cottonseed, tree nuts, globe artichoke, cherry subgroup 12–12A, and herb subgroup 19A.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that emamectin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Specific values used in the acute assessment for percent crop treated are: 10% almonds, 20% apples, 20% broccoli, 40% brussels sprouts, 25% cabbage, 20% cauliflower, 40% celery, 10% chicory, 2.5% cotton, 20% lettuce, 20% pears, 15% peppers, 2.5% pistachios, 10% spinach, 20% tomatoes, and 2.5% walnuts.

Specific values used in the chronic assessment for percent crop treated are: 2.5% almonds, 10% apples, 5% broccoli, 20% brussels sprouts, 10% cabbage, 5% cauliflower, 20% celery, 5% chicory, 10% lettuce, 5% pears, 5% peppers, 2.5% pistachios, 5% spinach, 15% tomatoes, and 2.5% walnuts.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figures for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use

less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for emamectin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of emamectin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide in Water Calculator (PWC), the estimated drinking water concentrations (EDWCs) of emamectin for acute exposures are estimated to be 1.5 parts per billion (ppb) for surface water and EDWCs for chronic exposures are estimated to be 1.15 ppb for surface water. No groundwater concentrations are predicted for emamectin, as the model (PRZM–GW; pesticide root zone model—groundwater) indicates emamectin will not break through into groundwater over the 100-year course of the modeled scenario.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 1.5 ppb was used to assess the contribution to drinking water and for the chronic dietary risk assessment, the water concentration of value 1.15 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Residential exposures are not anticipated from the proposed uses of emamectin, nor are they anticipated from existing uses of emamectin since they are agricultural uses, restricted use products (*i.e.,* restricted to use by certified applicators only), or are limited to non-residential areas (*i.e.,* commercial and industrial areas) with the exception of a gel bait product. The ready-to-use (RTU) gel bait product is registered for use in multiple locations, including in residential areas. As the RTU product requires no mixing/loading, the only potential for residential handler exposure is via application. When applying this product according to use directions, bait points and bait beads are intended to be placed in cracks and crevices where direct contact by adults is anticipated to be negligible. Post-application exposures for adults and children are also unlikely due to the nature of the application method, and the location of the bait placement. Therefore, a residential exposure assessment has not been conducted and there are no residential risk estimates recommended for use in the aggregate risk assessment for emamectin.

4. *Cumulative effects from substances with a common mechanism of toxicity.* The Agency is required to consider the cumulative risks of chemicals sharing a common mechanism of toxicity. In 2016, EPA's Office of Pesticide Programs released a guidance document entitled *Pesticide Cumulative Risk Assessment: Framework for Screening Analysis* (*https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/pesticide-cumulative-risk-assessment-framework*). This document provides guidance on how to screen groups of pesticides for cumulative evaluation using a two-step approach beginning with the evaluation of available toxicological information and if necessary, followed by a risk-based screening approach. This framework supplements the existing guidance documents for establishing common mechanism groups (CMGs) and conducting cumulative risk assessments (CRA).

The Agency has utilized this framework for abamectin and determined that abamectin along with emamectin form a candidate CMG of the avermectin macrocyclic lactones. This group of pesticides is considered a candidate CMG because they share characteristics to support a testable hypothesis for a common mechanism of action and while there are sufficient toxicological data to suggest a common pathway, there are not adequate data to establish those key events in a pathway as described in the mode of action/adverse outcome pathway (MOA/AOP) framework (*e.g.,* lack of dose or temporal concordance of proposed key events).

In 2017, the Agency conducted a screening-level cumulative exposure analysis consistent with the guidance described in the cumulative screening framework. The screening-level cumulative assessment for the avermectin macrocyclic lactones, abamectin and emamectin, indicated that cumulative aggregate dietary and residential exposures for abamectin and emamectin were below the Agency's levels of concern.

Based upon updated use information (*i.e.,* new uses), the Agency has updated its screening-level cumulative exposure analysis for the avermectin macrocyclic lactones, including abamectin and emamectin. This updated screening-level cumulative exposure assessment for the avermectin macrocyclic lactones, abamectin and emamectin, indicated that that cumulative aggregate dietary and residential exposures for abamectin and emamectin were below the Agency's levels of concern. The screening memo, titled ''*Avermectin Macrocyclic Lactones, Abamectin and Emamectin. Cumulative Screening Risk Assessment*'' can be found in docket ID number EPA–HQ–OPP–2018–0088 at *http://www.regulations.gov.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Emamectin did not elicit increased fetal sensitivity in developmental toxicity studies in rats and rabbits. In the reproductive toxicity study, emamectin produced neuronal degeneration in the brain and spinal cord in parental and offspring animals at a similar dose level (1.8 mg/kg/day), and no increase in quantitative sensitivity was found in the pup with respect to the neurotoxicity. However, in the developmental neurotoxicity study in rats, there was an increase in both quantitative and qualitative sensitivity in the pups as no adverse effect was seen at the highest dose tested (3.6/2.5 mg/kg/day) in parental animals, while at 0.6 mg/kg/day, the pups showed a dose-related decrease in open field motor activity at post-natal day 17. Body tremors, hind-limb extension, and auditory startle

were also observed in the high dose pups (3.6/2.5 mg/kg/day).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for emamectin is complete.

ii. The proposed MOA is interaction with GABA receptors leading to neurotoxicity. The clinical signs observed in the emamectin database are consistent with the proposed MOA. Following emamectin exposure, neurotoxicity has been seen across multiple studies and species of test animals. Neurotoxic effects seen in various studies are consistent with the MOA of emamectin, and the selected toxicity endpoints and POD is protective of the neurotoxic effects in the data.

iii. As discussed above, the developmental neurotoxicity study showed an increase in both quantitative and qualitative sensitivity in the pups as indicated by a dose-related decrease in open field motor activity at post-natal day 17 at 0.6 mg/kg/day. Body tremors, hind-limb extension, and auditory startle were also observed in the high dose pups (2.5 mg/kg/day), while no adverse effects were seen in the parental animals at the highest tested dose (3.6 mg/kg/day). However, the toxicity endpoint and POD (0.25 mg/kg/day) selected for risk assessment are protective of the effects seen in the pups.

iv. There are no residual uncertainties for emamectin with respect to the exposure databases. Although the dietary exposure estimates are partially refined, anticipated residue estimates for most commodities were derived from field trials which are still considered conservative since field trials are conducted under maximum use conditions (maximum allowed application rate and number of applications, minimum pre-harvest interval, etc.). Monitoring data were used for apples in the acute assessment since apple juice had a significant impact on exposure. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to emamectin in drinking water. There are no anticipated exposures to residential handlers, or for post-application exposure of adults and children. These assessments will not underestimate the exposure and risks posed by emamectin.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to emamectin will occupy 26% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk:* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to emamectin from food and water will utilize 3.4% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of emamectin is not expected.

3. *Short-term risk.* A short-term adverse effect was identified; however, emamectin is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for emamectin.

4. *Intermediate-term risk.* An intermediate-term adverse effect was identified; however, emamectin is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for emamectin.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods (Method 244–92–3 and Method 244–92–3, Revision 1) are available for the enforcement of tolerances on plants. The methods determine residues of emamectin and its regulated isomers and degradates/metabolites using high performance liquid chromatography with fluorescence detection (HPLC/FLD).

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for emamectin on various commodities that are different than the tolerances established for emamectin in the United States.

The U.S. and Codex residue definitions are not harmonized. The U.S. residue definition for emamectin includes the sum of emamectin and its metabolites (8,9-isomer) for plants and livestock. The Codex residue definition includes only emamectin for plants and livestock commodities.

Codex has MRLs for residues of emamectin on tomato, tomatillo, bell pepper, and non-bell pepper, the representative commodities of the fruiting vegetable group 8–10 at 0.02 ppm each. The U.S. tolerance at 0.02 ppm for residues on crop group 8–10 is being harmonized with these Codex MRLs.

Codex has an MRL for residues of emamectin on mustard greens, the representative commodity for *Brassica* leafy greens subgroup 4–16B at 0.2 ppm. The U.S. tolerance on subgroup 4–16B is being harmonized with Codex mustard greens, the representative commodity, at 0.20 ppm.

Codex has MRLs for residues of emamectin on head lettuce at 1 ppm and leaf lettuce at 0.7 ppm. The current U.S. tolerance is 0.1 ppm for subgroup 4–16A, which has head lettuce, leaf lettuce, and spinach as the representative commodities. EPA is therefore harmonizing the tolerance for subgroup 4–16A with Codex head lettuce at 1 ppm.

Codex has MRLs for apple and pear at 0.02 ppm each. EPA harmonizing the tolerance on pome fruit, group 11–10 with these MRLs at 0.02 ppm.

For tree nut crop group 14–12, the Codex MRLs for residues on the representative commodities of this group is 20x lower than the U.S. tolerances being established in this rulemaking. Lowering the tolerance could cause U.S. growers to have violative residues when following label instructions; therefore, EPA is not harmonizing the tolerance with the Codex MRLs.

For all other commodities, Codex does not have established MRLs.

C. Revisions to Petitioned-For Tolerances

For new uses on globe artichoke, herb subgroup 19A, and cherry subgroup 12–12A, the tolerances differ slightly from those proposed by IR–4 due to differences in calculating parent equivalents of emamectin metabolites from the residue data.

The currently established tolerance on crop group 11 and the proposed tolerance on crop group 11–10 are both at 0.025 ppm. The tolerance for pome fruit crop group 11–10 is being established at 0.02 ppm to harmonize with Codex MRLs on apple and pear.

The tolerance on *Brassica* leafy greens subgroup 4–16B is being set at 0.2 ppm instead of the proposed level at 0.050 ppm and the tolerance on leafy greens subgroup 4–16A is being set at 1 ppm instead of 0.1 ppm to harmonize with Codex.

For the proposed tolerance on fennel, Florence, the commodity definition was corrected to be Fennel, florence, fresh leaves and stalk.

For the other commodities and crop groups, the tolerances differ from the petitioned-for tolerances due to the use of HED rounding class practice.

The proposed tolerance for emamectin on vegetable, cucurbit, group 9 at 0.03 ppm is not necessary because the available data support the existing tolerance of 0.02 ppm for that crop group.

V. Conclusion

Therefore, tolerances are established for residues of emamectin, including its metabolites and degradates in or on the raw agricultural commodities Artichoke, globe at 0.05 ppm; *Brassica,* leafy greens, subgroup 4–16B at 0.2 ppm; Celtuce at 0.1 ppm; Cherry subgroup 12–12A at 0.09 ppm; Fennel, florence, fresh leaves and stalk at 0.1 ppm; Fruit, pome, group 11–10 at 0.02 ppm; Herb subgroup 19A at 0.4 ppm; Kohlrabi at 0.05 ppm; Leaf petiole vegetable subgroup 22B at 0.1 ppm; Leafy greens subgroup 4–16A at 1 ppm; Nut, tree, group 14–12 at 0.02 ppm; Vegetable, *brassica,* head and stem, group 5–16 at 0.05 ppm; and Vegetable, fruiting, group 8–10 at 0.02 ppm.

Additionally, the following existing tolerances are removed as unnecessary due to the establishment of the above tolerances: Fruit, pome, group 11 at 0.025; Nut, tree, group 14 at 0.02 ppm; Pistachio at 0.02 ppm; Turnip, greens at 0.050 ppm; Vegetable, *brassica,* leafy, group 5 at 0.050 ppm; Vegetable fruiting, group 8 at 0.020 ppm; and Vegetable, leafy, except *brassica,* group 4 at 0.100 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 8, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.505, amend the table in paragraph (a)(1) as follows:

■ i. Add alphabetically the entries ''Artichoke, globe''; ''*Brassica,* leafy greens, subgroup 4–16B''; ''Celtuce''; ''Cherry subgroup 12–12A''; ''Fennel, florence, fresh leaves and stalk''; ''Fruit, pome, group 11–10''; ''Herb subgroup 19A''; ''Kohlrabi''; ''Leaf petiole vegetable subgroup 22B''; ''Leafy greens subgroup 4–16A''; ''Nut, tree, group 14–12''; ''Vegetable, *brassica,* head and stem, group 5–16''; and ''Vegetable, fruiting, group 8–10'';

■ ii. Remove the entries for ''Fruit, pome, group 11''; ''Nut, tree, group 14''; ''Pistachio''; ''Turnip, greens''; ''Vegetable, *brassica,* leafy, group 5''; ''Vegetable fruiting, group 8''; and ''Vegetable, leafy, except *brassica,* group 4''.

The additions read as follows:

§ 180.505 Emamectin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Artichoke, globe	0.05
Brassica, leafy greens, subgroup 4–16B	0.2
Celtuce	0.1
Cherry subgroup 12–12A	0.09
* * * * *	
Fennel, florence, fresh leaves and stalk	0.1
Fruit, pome, group 11–10	0.02
* * * * *	
Herb subgroup 19A	0.4
Kohlrabi	0.05
Leaf petiole vegetable subgroup 22B	0.1
Leafy greens subgroup 4–16A	1
Nut, tree, group 14–12	0.02
* * * * *	
Vegetable, *brassica,* head and stem, group 5–16	0.05
* * * * *	
Vegetable, fruiting, group 8–10	0.02

* * * * *

[FR Doc. 2019–18386 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–311; FCC 19–80]

Local Franchising Authorities' Regulation of Cable Operators and Cable Television Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules governing how local franchising authorities may regulate cable operators and cable television services.

DATES: These rule revisions are effective on September 26, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Maria Mullarkey or Raelynn Remy of the Media Bureau, Policy Division, at *Maria.Mullarkey@fcc.gov, Raelynn.Remy@fcc.gov* or (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order, FCC 19–80, adopted on August 1, 2019. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *https://docs.fcc.gov/public/attachments/FCC-19-80A1.docx.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Third Report and Order (Third Order), we interpret sections of the Communications Act of 1934, as amended (the Act) that govern how local franchising authorities (LFAs) may regulate cable operators and cable television services, with specific focus on issues remanded from the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) in *Montgomery County, Md. et al.* v. *FCC.*

2. Every LFA as well as every ''cable operator'' that offers ''cable service'' must comply with the cable franchising provisions of Title VI of the Act. Section 621(b)(1) prohibits a cable operator from providing cable service without first obtaining a cable franchise, while section 621(a)(1) circumscribes the power of LFAs to award or deny such franchises. In addition, section 622 allows LFAs to charge franchise fees and sets the upper boundaries of those fees. Notably, section 622 caps the fee at five percent of a ''cable operator's gross revenues derived . . . from the operation of the cable system to provide cable service.'' [1] When Congress initially adopted these sections in 1984, it explained that it was setting forth a federal policy to ''define and limit the authority that a franchising authority may exercise through the franchise process.'' Congress also expressly preempted any state or local laws or actions that conflict with those definitions and limits.[2]

3. As summarized in detail in the Second Further Notice of Proposed Rulemaking (FNPRM) (83 FR 51911, Oct. 15, 2018), the Commission has an extensive history of rulemakings and litigation interpreting sections 621 and

[1] 47 U.S.C. 542.

[2] Id. 556(c).

622. In short, the Commission in 2007 released a First Report and Order (72 FR 13189, March 21, 2007) to provide guidance about terms and conditions in local franchise agreements that are unreasonable under section 621 of the Act with respect to new entrants' franchise agreements.[3] Two major conclusions that the Commission adopted are that (1) non-cash, ''in-kind'' contributions from cable operators to franchise authorities are franchise fees that count toward the statutory cap of five percent of cable operator revenue, and (2) franchising authorities may not use their cable franchising authority to regulate non-cable services (like telephone and broadband services) that the new entrants deliver over their mixed-use networks (*i.e.,* networks that carry broadband services, voice services, and other non-cable services, in addition to video programming services). The Commission also sought comment on whether to extend those conclusions to agreements that LFAs have with incumbent cable operators, and ultimately decided in a Second Report and Order (72 FR 65670, Nov. 23, 2007) and an Order on Reconsideration (80 FR 12088, Mar. 6, 2015) that those conclusions should apply to incumbent cable operators.

4. In *Montgomery County,* the Sixth Circuit addressed challenges by LFAs to the Second Report and Order and the Order on Reconsideration.[4] The court agreed that in-kind (*i.e.,* non-cash) contributions are franchise fees as defined by section 622(g)(1), noting that section 622(g)(1) defines ''franchise fee'' to include ''any tax, fee, or assessment of any kind'' and that the terms ''tax'' and ''assessment'' can include nonmonetary exactions. The court found, however, that the fact that the term franchise fee can include in-kind contributions ''does not mean that it necessarily does include every one of them.'' The court concluded that the Commission failed to offer any explanation in the Second Report and Order or in the Order on Reconsideration as to why section 622(g)(1) allows it to treat cable-related, ''in-kind'' exactions—such as free or discounted cable services or obligations related to PEG channels—as franchise fees.[5] LFAs had claimed that the Commission's interpretation would limit LFAs' ability to enforce their statutory authority to require cable operators to dedicate channel capacity for PEG use and to impose build-out obligations in low-income areas, and the court noted that the Commission's orders did not reflect any consideration of this concern. The court also stated that the Commission failed to define what ''in-kind'' means. The court therefore vacated as arbitrary and capricious the Second Report and Order and the Order on Reconsideration to the extent that they treat cable-related, in-kind exactions as franchise fees under section 622(g)(1). The court directed the Commission to determine and explain on remand to what extent cable-related, in-kind contributions are franchise fees under the Act.

5. The court in *Montgomery County* also agreed with LFAs that neither the Second Report and Order nor the Order on Reconsideration offered a valid statutory basis for the Commission's application of its prior ''mixed-use ruling'' to incumbent cable operators.[6] Under the mixed-use rule, ''LFAs' jurisdiction applies only to the provision of cable services over cable systems'' and ''an LFA may not use its video franchising authority to attempt to regulate a LEC's entire network beyond the provision of cable services.'' The court stated that the Commission's decision in the First Report and Order to apply the mixed-use rule to new entrants had been defensible because section 602(7)(C) of the Act expressly states that LFAs may regulate Title II carriers only to the extent that they provide cable services and the Commission found that new entrants generally are Title II carriers. The court observed that in extending the mixed-use rule to incumbent cable operators in the Second Report and Order, the Commission merely relied on the First Report and Order's interpretation of section 602(7)(C), noting that section 602(7)(C) ''does not distinguish between incumbent providers and new entrants.'' The court found, however, that this reasoning is not an affirmative basis for the Commission's decision in the Second Report and Order to apply the mixed-use rule to incumbent cable operators because section 602(7)(C) by its terms applies only to Title II carriers and ''many incumbent cable operators are not Title II carriers.'' The court further found that the Order on Reconsideration did not offer any statutory basis for the Commission's decision to extend the mixed-use rule to incumbent cable operators. Accordingly, the court concluded that the Commission's extension of the mixed-use rule to incumbent cable operators that are not common carriers was arbitrary and capricious. The court vacated the mixed-use rule as applied to those incumbent cable operators and remanded for the Commission ''to set forth a valid statutory basis, if there is one, for the rule as so applied.''

6. The Commission in September 2018 issued the Second FNPRM to address the issues raised by the remand from the Sixth Circuit in *Montgomery County.*

7. We largely adopt our tentative conclusions in the Second FNPRM.[7] First, we conclude that cable-related, in-kind contributions required by LFAs from cable operators as a condition or requirement of a franchise agreement are franchise fees subject to the statutory five percent cap on franchise fees set forth in section 622 of the Act. We find that the Act exempts capital contributions associated with the acquisition or improvement of a PEG facility from this definition and remind LFAs that under the Act they may only require ''adequate'' PEG access channel capacity, facilities, or financial support. Second, we find that our mixed-use rule applies to incumbent cable operators. Third, we find that the Act preempts any state or local regulation of a cable operator's non-cable services that would

[3] The term ''new entrants'' as used in the First Report and Order refers to entities that choose to offer ''cable service'' over a ''cable system'' utilizing public rights-of-way and thus are deemed under the Act to be ''cable operator[s]'' that must obtain a franchise. Such new entrants largely were telecommunications carriers subject to Title II of the Act that were seeking to enter the cable services market.

[4] Montgomery County, 863 F.3d at 487.

[5] In the First Report and Order, the Commission ruled that ''any requests made by LFAs that are unrelated to the provision of cable services by a new competitive entrant are subject to the statutory 5 percent franchise fee cap.'' This ruling was upheld by the Sixth Circuit in *Alliance.* The Commission later relied on the First Report and Order to conclude that ''in-kind payments involving both cable and non-cable services'' count toward the franchise fee cap. The court found that the Order on Reconsideration incorrectly asserted that the First Report and Order had already treated ''in-kind'' cable-related exactions as franchise fees and that the Sixth Circuit had approved such treatment in *Alliance.* The court also found that the First Report and Order did not make clear that cable-related exactions are franchise fees under section 622(g)(1). In this regard, the court pointed out that the Commission specifically told the Sixth Circuit in *Alliance* that the First Report and Order's ''analysis of in-kind payments was expressly limited to payments that do not involve the provision of cable service.''

[6] The court noted that LFAs' primary concern with the mixed-use ruling is that it would prevent them from regulating ''institutional networks'' or ''I-Nets''—communication networks that are constructed or operated by the cable operator and are generally available only to subscribers who are not residential customers—even though the Act makes clear that LFAs may regulate I-Nets. The court observed, however, that the Commission acknowledged that its mixed-use rule was not meant to prevent LFAs from regulating I-Nets.

[7] As discussed below, we define ''cable related, in-kind contributions'' slightly differently than proposed, and our reasoning for not applying build-out costs is different than what we proposed.

impose obligations on franchised cable operators beyond what Title VI of the Act allows. Finally, we decide that our guidance related to the local franchising process in this docket also will apply to state-level franchising actions and state regulations that impose requirements on local franchising.

8. Section 622 of the Act contains a broad definition of franchise fees. For the reasons provided below, we find that most cable-related, in-kind contributions are encompassed within this definition and thus must be included for purposes of calculating the statutory five percent cap on such fees. In this section, we first explain our interpretation of section 622 and why the definition of franchise fees includes most cable-related, in-kind contributions. We then explain how our interpretation applies to certain common franchise agreement terms. Lastly, we explain the process that LFAs and cable operators should use to amend their franchise agreements to conform to this Order.

9. Addressing the first issue raised by the remand from the Sixth Circuit in *Montgomery County,* we adopt our tentative conclusion that we should treat cable-related, in-kind contributions [8] required by LFAs from cable operators as a condition or requirement of a franchise agreement as franchise fees subject to the statutory five percent cap set forth in section 622 of the Act, with limited exceptions as described herein. We also adopt our tentative conclusion that this treatment of cable-related, in-kind contributions should be applied to both new entrants and incumbent cable operators. As explained below, we find that this interpretation is consistent with the statutory language and legislative history.

10. Section 622 of Title VI, entitled ''Franchise fees,'' governs cable operator obligations with respect to franchise fees. Specifically, section 622(a) states that any cable operator may be required under the terms of any franchise agreement to pay a franchise fee, and section 622(b) sets forth the limitation that ''[f]or any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services.'' Notably, section 622(g) defines the term ''franchise fee'' for purposes of this section.

11. To understand what types of contributions from cable operators are franchise fees subject to the five percent statutory cap, the key provision is the section 622(g) definition, which states that ''the term 'franchise fee' includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such,'' subject to certain enumerated exceptions. Specifically, according to the definition, the term ''franchise fee'' does not include the following: (1) Any tax, fee, or assessment of general applicability; [9] (2) in the case of any franchise in effect on October 30, 1984, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, PEG access facilities; (3) in the case of any franchise granted after October 30, 1984, capital costs which are required by the franchise to be incurred by the cable operator for PEG access facilities; (4) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; [10] or (5) any fee imposed under Title 17.[11] Because Congress spoke directly to the issue of what constitutes a franchise fee in section 622(g), our analysis of whether cable-related, in-kind exactions are included in the franchise fee is appropriately focused on this statutory language.

12. As a preliminary matter, we note our prior finding, which was upheld by the Sixth Circuit in *Montgomery County,* that the franchise fee definition in section 622(g) can encompass both monetary payments imposed by a franchising authority or other governmental entity on a cable operator, as well as ''in-kind'' payments—*i.e.,* payments consisting of something other than money, such as goods and services [12]—that are so imposed.[13] The definition of ''franchise fee'' in section 622(g)(1) broadly covers ''any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator . . . solely because of [its] status as such.'' Because the statute does not define the terms ''tax,'' ''fee,'' or ''assessment,'' we look to the ordinary meaning of such terms.[14] As the court explained in *Montgomery County,* the definitions of the terms ''tax'' and ''assessment,'' in particular, ''can include noncash exactions.'' Further, as

[8] We define this term to include ''any non-monetary contributions related to the provision of cable services provided by cable operators as a condition or requirement of a local franchise, including but not limited to free or discounted cable service to public buildings, non-capital costs in support of PEG access, and costs attributable to the construction of I–Nets. It does not include the costs of complying with build-out and customer service requirements.''

[9] In the Second FNPRM, we noted that, by definition, a tax, fee, or assessment of general applicability does not cover cable-related, in-kind contributions, and therefore we tentatively concluded that this exclusion is not applicable to such contributions. No commenter disputes this analysis, and we affirm it here.

[10] In the First Report and Order, the Commission found that the term ''incidental'' in this section should be limited to the list of incidentals in the statutory provision, as well as certain other minor expenses, and the court in *Alliance* upheld this determination. The Commission also emphasized that non-incidental costs should be counted toward the five percent cap on franchise fees, and listed various examples including attorney fees and consultant fees, application or processing fees that exceed the reasonable cost of processing the application, acceptance fees, free or discounted services provided to an LFA, and in-kind services unrelated to the provision of cable services. In the Second FNPRM, we explained that, although the statute does not define the term ''incidental,'' based on the interpretive canon of noscitur a sociis, the exemplary list delineated in the text of the provision as well as the applicable legislative history suggests that the term refers to costs or requirements related to assuring that a cable operator is financially and legally qualified to operate a cable system, not to cable-related, in-kind contributions. Consistent with this analysis and precedent, we find that cable-related, in-kind contributions demanded by an LFA do not qualify as ''incidental'' charges excluded in section 622(g)(2)(D). No commenter disputes our interpretation of this particular exclusion.

[11] In the Second FNPRM, we explained that this section excludes from the definition of franchise fees any fees imposed under the Copyright Act under Title 17, United States Code, and thus does not appear to apply to cable-related, in-kind contributions. No commenter disputes this analysis, and we affirm it here.

[12] According to the record, LFAs in some cases require a grant or other monetary contribution earmarked for cable-related services, such as PEG and I-Net support. While we focus here on whether cable-related, in-kind (non-monetary) contributions are subject to the five percent cap on franchise fees, we note that these monetary contributions are subject to the franchise fee cap, unless otherwise excluded under section 622(g)(2).

[13] We reject the argument that franchise considerations are not ''imposed'' by a franchising authority because they are negotiated in an arms-length transaction between the parties and ''are not established by force.'' The definition of the term ''impose'' is not limited to ''established as if by force,'' but can also mean ''to establish or apply by authority.'' Further, under this narrow interpretation of the term, no monetary or in-kind payments could be construed as a franchise fee if they are negotiated by the parties as terms of the franchise agreement. As NCTA points out, ''[b]y this standard, even a franchise agreement containing a requirement that the cable operator pay five percent of gross revenues to the franchising authority would not contain a franchise fee, since the five percent fee was included in a negotiated document and was not imposed by government fiat.''

[14] We disagree with NATOA et al.'s contention that the Commission ''nowhere analyzes or explains why [certain] franchise requirements are 'assessments' or 'exactions.' '' Rather, we find that an ''assessment,'' the term used in the statute, includes any contribution imposed by government, based on its ordinary meaning.

the court observed, section 622(g)(1) ''more specifically defines 'franchise fee' to include 'any tax, fee, or assessment of any kind[,]' . . . which requires us to give those terms maximum breadth.'' Thus, consistent with the court's conclusion on this issue, the term franchise fee in section 622(g)(1) includes non-monetary payments. We, therefore, reject arguments that it should be construed to cover only monetary payments.[15]

13. As the court noted in *Montgomery County,* ''that the term 'franchise fee' can include noncash exactions, of course, does not mean that it necessarily does include every one of them.'' As such, the next step in our analysis is to evaluate specifically whether cable-related, in-kind contributions are included within the franchise fees. The Commission previously determined that in-kind contributions unrelated to the provision of cable service are franchise fees subject to the statutory five percent cap, and the court's decision in *Montgomery County* upheld this interpretation.[16] In making this determination, the Commission pointed to examples in the record where LFAs demanded in-kind contributions unrelated to the provision of cable services in the context of franchise negotiations, and it explained that such requests do not fall within any of the exempted categories in section 622(g)(2) and thus should be considered a franchise fee under section 622(g)(1).[17]

14. We find that there is no basis in the statute for exempting all cable-related, in-kind contributions for purposes of the five percent franchise fee cap or for distinguishing between cable-related, in-kind contributions and in-kind contributions unrelated to the provision of cable services. As noted above, the section 622(g)(1) franchise fee definition broadly covers ''any tax, fee, or assessment of any kind,'' and we conclude that cable-related, in-kind contributions fall within this definition. There is nothing in this language that limits in-kind contributions included in the franchise fee. In fact, Congress specified that the definition covers ''any'' tax, fee, or assessment ''of any kind,'' which means those terms should be interpreted expansively and given ''maximum breadth.'' [18]

15. Further, there is no general exemption for cable-related, in-kind contributions in the five excluded categories listed in section 622(g)(2). Only two of the exclusions encompass two very specific kinds of cable-related, in-kind contributions, but not all such contributions generally. In particular, section 622(g)(2)(B) excludes payments required by the franchise to be made by the cable operator for, or in support of the use of, PEG access facilities (for franchises in effect on October 30, 1984), and section 622(g)(2)(C) excludes capital costs which are required by the franchise to be incurred by the cable operator for PEG access facilities (for franchises granted after October 30, 1984). We agree with ACA that the structure of the relevant statutory provision is ''straightforward,'' providing a broad definition of franchise fee, ''then expressly provid[ing] a limited number of exceptions to this definition, none of which is so broad as to include all cable-related, in-kind contributions.'' [19]

16. Moreover, the fact that Congress carved out specific exceptions to the franchise fee definition for certain PEG-related contributions bolsters the conclusion that Congress did not intend to establish a general exemption for all cable-related, in-kind contributions from treatment as franchise fees. Because support for PEG access facilities and PEG capital costs fall within the broader category of cable-related, in-kind contributions, Congress would not have needed to craft these narrow exceptions if all cable-related, in-kind contributions generally were exempted. We disagree with the contention that the specific exceptions in section 622(g)(2) were intended to address only ''payments that otherwise might be considered franchise fees,'' and that ''[o]ther cable-related obligations were not considered 'fees' to begin with, let alone payments that required a specific exemption.'' This argument erroneously constricts the definition of franchise fees to apply only to ''fees,'' while the statute more broadly includes ''any tax, fee, or assessment of any kind.'' Further, we believe it is more consistent with the statutory text and structure to construe the exceptions as carve-outs from a broader definition that sweeps in all cable-related, in-kind contributions.[20]

17. While the statutory text is alone sufficient to support our conclusion, we also find that the legislative history supports our position that cable-related, in-kind contributions are franchise fees subject to the five percent cap. As we observed in the Second FNPRM, we see no basis in the legislative history for distinguishing between in-kind contributions unrelated to the provision of cable services and cable-related, in-kind contributions for purposes of the five percent franchise fee cap.[21] Further, we see no basis in the legislative history to treat in-kind payments differently from monetary payments for purposes of determining what is a franchise fee. The legislative history, in discussing what constitutes a franchise fee, refers to the definition in section 622(g)(1), which ''include[s] any tax, fee, or assessment imposed on a cable operator or subscribers solely because of their status as such,'' and it makes no distinction between cable-related contributions and those unrelated to cable services, nor between monetary and non-monetary payments. The legislative history then

[15] Contrary to these arguments, the terms used in the statute are not limited to monetary payments. Moreover, these arguments ignore Congress' specification that the franchise fee includes ''any tax, fee, or assessment of any kind,'' essentially reading this expansive language out of the statute. For example, although Anne Arundel County et al. argue ''that generally, taxes, fees, and assessments are monetary, but that in exceptional circumstances (such as forfeitures) non-monetary obligations may also qualify,'' there is nothing in the statute—which specifically applies to a tax, fee, or assessment of any kind—or in the definition of these terms that supports this statement.

[16] Contrary to the contention of NATOA et al., the Commission's finding in the First Report and Order that in-kind contributions unrelated to the provision of cable services are franchise fees subject to the statutory five percent cap was undisturbed by subsequent court decisions in *Alliance* and *Montgomery County.* The court in *Montgomery County* vacated the orders to the extent they treat cable-related, in-kind exactions as franchise fees, and thus the Commission's finding with regard to in-kind contributions unrelated to the provision of cable services still stands.

[17] In the First Report and Order, the Commission cited examples of in-kind contributions unrelated to the provision of cable services from the record, including requests for traffic light control systems, scholarships, and video hookups for a holiday celebration.

[18] Anne Arundel County et al. make the conclusory statement that ''[r]egulatory obligations are clearly not a tax or fee,'' without citing a definition of these terms or including the term ''assessment,'' and they make no mention of the court's own conclusion in *Montgomery County* that the term franchise fee ''can include noncash exactions.''

[19] According to Anne Arundel County et al., the Commission incorrectly implies that ''unless something falls within an exception, it must be a tax, fee, or assessment.'' However, this is inconsistent with our analysis, in which we first evaluate whether a type of contribution meets the definition of franchise fee in section 622(g)(1) and, if so, then determine whether it falls within a specified exception in section 622(g)(2). It is also inconsistent with our conclusion herein that certain requirements, such as customer service and build-out requirements, are not covered by the definition of franchise fee.

[20] For example, under section 622(g)(2)(B), payments required by the franchise to be made by the cable operator for, or in support of the use of, PEG access facilities are included in the franchise fee only for franchises granted after October 30, 1984.

[21] According to NCTA, the legislative history shows that Congress' intent generally was to limit the total financial obligations that franchising authorities may impose on cable operators. We find that allowing LFAs to circumvent the statutory five percent cap by not counting cable-related, in-kind contributions that clearly fall within the statutory definition of franchise fees would be contrary to Congress' intent as reflected in the broad definition of franchise fee in the statute.

elaborates on the specific exemptions in section 622(g)(2) and, in particular, notes that ''[s]pecific exemptions from the franchise fee limitations are included for certain payments related to public, educational and governmental access.'' It specifies that, ''[f]or existing franchises, a city may enforce requirements that additional payments be made above the 5 percent cap to defray the cost of providing public, educational and governmental access, including requirements related to channels, facilities and support necessary for PEG use.'' Because Congress limited this exception to then-existing franchises, this provision elucidates Congress' intent that contributions in support of PEG access—which are cable-related, in-kind contributions—are subject to the five percent cap for franchises granted after the 1984 Cable Act.[22]

18. We disagree with commenters who cite to a portion of the legislative history as evidence of Congress' intent that franchise fees include only monetary payments made by cable operators. Specifically, LFA commenters cite a statement in the discussion of subsection 622(g)(2)(C), which excludes certain PEG-related capital costs from the franchise fee definition, that ''[i]n general, this section defines as a franchise fee only monetary payments made by the cable operator, and does not include as a 'fee' any franchise requirements for the provision of services, facilities or equipment.'' LFA commenters' reading of this statement is inconsistent with the overall text and structure of section 622(g).[23] Section 622(g)(1) ''specifically defines 'franchise fee' to include 'any tax, fee, or assessment of any kind[,]' '' subject to certain enumerated exclusions, and the court in *Montgomery County* was clear that this statutory language ''requires us to give those terms maximum breadth.'' The Commission has already concluded, and the Sixth Circuit has twice upheld, that non-monetary payments can be franchise fees. Further, this reading would render section 622(g)(2)(C) superfluous because there would not need to be an exemption for PEG-related in-kind contributions if non-monetary contributions were not franchise fees in the first place.

19. Because we believe that the pertinent statutory provision in section 622(g) supports our conclusion that cable-related, in-kind contributions are franchise fees, we reject arguments raised by franchise authorities that other Title VI provisions should be read to exclude costs that are clearly included by the franchise fee definition. Instead of focusing on the key definition of ''franchise fee'' as ''any tax, fee, or assessment of any kind'' subject to certain enumerated exceptions, LFA commenters cite to other parts of the statute which, they argue, evince Congress' intent to exclude cable-related, in-kind contributions from the statutory cap on franchise fees. We reject each of these arguments in turn below.

20. First, we affirm our tentative conclusion that treating cable-related, in-kind contributions as franchise fees would not undermine the provisions in the Act that authorize or require LFAs to impose cable-related obligations on franchisees. For example, section 611(b) of the Act permits LFAs to require that channel capacity be designated for PEG use and that channel capacity on I-Nets be designated for educational and governmental use. Anne Arundel County et al. argue that the Commission errs by not acknowledging that the Cable Act ''authorize[s] LFAs to both impose cable franchise obligations [in section 611] and collect franchise fees [in section 622]—they do not offset each other.'' However, as we observed in the Second FNPRM, the fact that the Act authorizes LFAs to impose such obligations does not mean that the value of these obligations should be excluded from the five percent cap on franchise fees. We agree with NCTA and ACA that there is no basis in the statutory text for concluding that the authority provided in section 611(b) affects the definition of franchise fee in section 622(g). As explained above, section 622(g) is the key provision that defines what is included in the franchise fee, and section 622(g)(2) carves out only limited exclusions for PEG-related costs and makes no mention of an I-Net-related exclusion. Since Congress enacted the PEG and I-Net provisions at the same time it added the franchise fee provisions, it could have explicitly excluded all costs related to PEG and I-Nets if it had intended they not count toward the cap.[24] Instead, they just excluded a subset of those costs. Further, if we were to interpret the statute such that all costs related to PEG, I-Nets, or other requirements imposed in section 611 are excluded from treatment as franchise fees because section 611(b) contemplates that such costs be incurred, the specific exemption for PEG capital costs in section 622(g)(2)(D) would be superfluous. While we acknowledge that PEG channels and I-Nets provide benefits to consumers, such benefits cannot override the statutory framework, which carves out only limited exclusions from franchise fees.

21. Next, we do not find persuasive the argument that section 626 of the Act ''reflects the fact that cable-related franchise requirements are not franchise fees.'' Section 626 directs franchising authorities to consider, among other things, whether a cable operator's franchise renewal proposal ''is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.'' NATOA et al. contend that if cable-related, in-kind requirements are included as franchise fees, ''it would be the LFA who pays for them, rendering the cost consideration in this Section obsolete.'' We disagree with this reasoning. As NCTA explains, ''[t]he cost/benefit analysis required under this provision underscores that Congress intended franchising authorities to balance the desire for any in-kind exactions requested by parties in the renewal process against the overall franchise fee burdens on cable operators and subscribers.'' The section 626 assessment does not lose its purpose if cable-related, in-kind contributions are counted as franchise fees; as part of this assessment, for example, a franchising authority could determine that cable-related community

[22] Although the City of New York opines that the examples of franchise fees in the legislative history are all ''services that do not use the cable operator's cable system or other communications facilities ('CF') or call on the core competencies ('CC') of the cable operator,'' this reading overlooks the fact that certain PEG-related costs are included as franchise fees, and it creates a distinction that is not apparent from either the statute or the legislative history.

[23] For the same reason, we are not persuaded by Anne Arundel County et al.'s reliance on a letter from the Commission's Cable Services Bureau that quotes the legislative history. First, this Bureau-level letter does not bind the Commission. Second, to the extent that the Bureau's guidance 20 years ago conflicts with the conclusions in this rulemaking, it is reversed and superseded. We note that the letter merely cites the statute and legislative history, without analysis.

[24] We disagree with the Cable Act Preservation Alliance (CAPA) that ''it is equally true that Congress could have explicitly noted the franchise fee limitation in 47 U.S.C. Section 531(b) if it had intended to include these PEG-related costs as franchise fees.'' There was no need for Congress to specify which PEG-related costs are franchise fees in section 611 when the statute sets forth a standalone provision, section 622, that defines what is included in the franchise fee and specifically addresses PEG-related costs. NATOA et al. argue that the Commission ''ignores that build-out and customer service obligations also were enacted by Congress at the same time it added the franchise fee provisions and were not explicitly excluded from the cap, yet . . . finds these are not 'franchise fees.' '' However, we explain herein that Congress expressly stated that cable operators are responsible for the cost of constructing cable systems. We also find herein that federally mandated customer service standards are not a ''tax, fee, or assessment'' and, thus, there was no need for Congress to exclude them from the franchise fee.

needs and interests can be met at a lower cost to cable subscribers than the full five percent franchise fee.[25] Moreover, the community needs assessment in section 626 also accounts for items that are not in-kind contributions subject to the franchise fee cap, such as build-out requirements.[26]

22. Finally, we disagree with commenters that cite a provision in section 622 that relates to itemization on customer bills as evidence that Congress did not intend PEG-related franchise obligations to be included in franchise fees. In particular, LFA commenters point to section 622(c)(1), which specifies that cable operators may identify as a separate line item on each subscriber bill each of the following: (1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid; (2) the amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support PEG channels or the use of such channels; and (3) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. LFA commenters argue that ''[t]hrough this language, Congress clearly outlined a separation between franchise fees and cable-related, in-kind fees.'' On the contrary, ''the fact that Section 622(c) allows cable operators to itemize certain charges on subscriber bills has no bearing on which charges meet the definition of franchise fees under Section 622(g).'' While section 622(g) was adopted as part of the 1984 Cable Act, Congress adopted section 622(c) years later in 1992 to promote transparency by allowing cable operators to inform subscribers about how much of their total bill is made of charges imposed by local governments through the franchising process. By differentiating the types of charges that can be itemized on subscriber bills, there is no indication that Congress intended to exclude certain charges from the franchise fee.[27]

23. Having established our interpretation of section 622(g), we adopt our tentative conclusion that this treatment of cable-related, in-kind contributions should be applied to both new entrants and incumbent cable operators. As the Commission has previously observed, section 622 ''does not distinguish between incumbent providers and new entrants.'' We affirm our belief that applying the same treatment of cable-related, in-kind contributions to both new entrants and incumbent cable operators will ensure a more level playing field and that the Commission should not place its thumb on the scale to give a regulatory advantage to any competitor.

24. We disagree with the contention that our interpretation of the franchise fee definition in section 622(g) is impermissible under *Chevron*.[28] Charles County, Maryland posits that ''[b]ecause Congress has directly addressed the questions at issue by employing precise, unambiguous statutory language in section 622 of the Act, the FCC's proposed rules re-imagining . . . what constitutes a 'franchise fee' are impermissible,'' as ''[o]nly Congress may alter or amend federal law.'' Charles County does not offer an explanation for why the statutory language is unambiguous beyond arguing that the words ''tax, fee, or assessment'' in the definition are terms of art. But regardless of whether these are terms of art, they can include non-monetary contributions, as the Sixth Circuit observed. And we believe that our interpretation of this language using traditional tools of statutory construction is a reasonable and permissible construction of the statute that effectuates Congressional intent for the reasons set forth above.[29] Indeed, it is the interpretation that is most consistent with the plain meaning of the statutory definition of franchise fee.

25. In this section, we analyze whether specific types of cable-related, in-kind contributions are franchise fees subject to the five percent statutory cap under section 622. First, we find that costs attributable to franchise terms that require free or discounted cable service to public buildings are franchise fees, consistent with our tentative conclusion that treating all cable-related, in-kind contributions as franchise fees unless expressly excluded would best effectuate the statutory purpose. Next, we adopt our tentative conclusion that costs in support of PEG access are franchise fees, with the exception of capital costs as defined below. Similarly, we find that costs attributable to construction of I-Nets are franchise fees. Finally, we conclude that build-out and customer service requirements do not fall within the statutory definition of franchise fee. Based on these conclusions with respect to specific types of costs, we adopt a definition of ''in-kind, cable-related contributions'' to include ''any non-monetary contributions related to the provision of cable services provided by cable operators as a condition or requirement of a local franchise, including but not limited to free or discounted cable service to public buildings, costs in support of PEG access other than capital costs, and costs attributable to the construction of I-Nets. It does not include the costs of complying with build-out and customer service requirements.''[30]

26. We find that costs attributable to franchise terms that require a cable operator to provide free or discounted cable service to public buildings, including buildings leased by or under control of the franchise authority, are cable-related, in-kind contributions that fall within the five percent cap on franchise fees. The record includes examples of cable operators providing cable service to public buildings as part of a franchise agreement. Consistent with our statutory interpretation above, providing free or discounted cable service to public buildings is an in-kind (*i.e.,* non-monetary) contribution imposed on a cable operator by a franchise authority, and is not included in one of the enumerated exceptions from the franchise fee in section 622(g)(2). Although certain commenters emphasize that free and discounted cable services have been considered franchise considerations that are not subject to the five percent cap on franchise fees in past franchise agreements,[31] we find that our reading

[25] As Congress noted when it adopted the five percent cap, the Commission capped franchise fees at three percent of a cable operator's revenue.

[26] Build-out requirements are subject to section 626's directive to assess reasonableness while taking into account the cost of such requirements, and a build-out requirement requested by an LFA could be challenged under section 626.

[27] Moreover, as NCTA observes, ''[t]he fallacy that section 622(c) distinguishes franchise fees from other exactions, as NATOA and others claim, is underscored by the fact that subsection (c)(3) repeats virtually verbatim section 622(g)(1)'s broad definition of a franchise fee. Yet, by NATOA's logic, the itemization of a cost under subsection (c)(3) would control its treatment for franchise fee purposes, removing it from the very definition that Congress established for such fees in section 622(g)(1). . . .''

[28] Review of the FCC's interpretation of the statutes it administers is governed by *Chevron USA, Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984).

[29] Where a ''statute is silent or ambiguous'' with respect to a specific issue, ''the question'' for the court is whether the agency has adopted ''a permissible construction of the statute.''

[30] We modify the definition slightly from what was proposed in the Second FNPRM to reflect the conclusions adopted herein.

[31] AWC cites a Bureau-level order in which the Cable Services Bureau found that where the LFA and cable operator agreed to establish franchise provisions regarding the eligibility standards for a senior citizen discount rate and the formula for adjusting that rate, these terms were not preempted by federal law. While this decision is about the inclusion of discounted services in the franchise terms, it does not address whether discounted services should be included in the franchise fee

that free and discounted services count towards the franchise fee cap is a reasonable interpretation and best effectuates Congressional intent given that the statute defines franchise fee broadly, carving out only limited exclusions. If LFAs could circumvent the five percent cap by requiring unlimited free or discounted cable services for public buildings, in addition to a five percent franchise fee, this result would be contrary to Congress's intent as reflected in the broad definition of ''franchise fee'' in the statute. We find that the Act does not provide any basis for treating the value attributable to free or discounted services in a different manner than other in-kind services which must be included in the franchise fee. Although we acknowledge that the provision of free or discounted cable service to public buildings, such as schools or libraries, can benefit the public, such benefits cannot override the statutory framework. Further, there are policy rationales for limiting free services, given that, in a competitive market, such contributions may raise the costs of the cable operator's service, reduce resources available for other services, and result in market inefficiency.

27. We conclude in this section that in-kind contributions related to PEG access facilities are cable-related, in-kind contributions, and are therefore included within the statutory definition of ''franchise fees'' under section 622(g)(1).[32] We next conclude that the term ''capital cost'' in section 622(g)(2)(C) should be given its ordinary meaning, which is a cost incurred in acquiring or improving a capital asset. Applying that interpretation, we conclude that the exclusion for capital costs under section 622(g)(2)(C) could include equipment that satisfies this definition, regardless of whether such equipment is purchased in connection with the construction of a PEG access facility. We then conclude that the record is insufficiently developed for the Commission to determine whether the provision of PEG channel capacity is included within section 622(g)(2)(C)'s exclusion for capital costs. We also find that the installation of PEG transport facilities are capital costs that are exempt from the five percent franchise fee cap,[33] and that maintenance of those facilities are operating costs that count toward the cap. Finally, we address policy arguments regarding the impact of these conclusions on the provision of PEG programming.

28. Consistent with our tentative conclusion in the Second FNPRM, we find that the definition of franchise fee in section 622(g)(1) encompasses PEG-related contributions. Like other taxes, fees, or assessments imposed by LFAs, we find that contributions related to PEG access facilities imposed by an LFA are subject to the five percent cap on franchise fees, unless they fall within one of the five exclusions set forth in section 622(g)(2). Consistent with the statutory analysis above, we conclude that the provision of equipment, services, and similar contributions for PEG access facilities are cable-related, in-kind contributions that meet the definition of franchise fee.[34] Such PEG-related contributions are not exempt under section 622(g)(2) of the Act unless they fall under the limited exceptions for capital costs and costs incurred by franchises existing at the time of the Cable Act's adoption in 1984. As explained above, our starting point for analyzing cable operator contributions to LFAs is that the Act defines ''franchise fee'' broadly and has limited, narrow exceptions. Thus, we believe that including in the franchise fee cap any costs that are not specifically exempt is consistent with the statute and reasonably effectuates Congressional intent.

29. Further, including contributions for PEG access facilities within the franchise fee definition is consistent with the overall structure of section 622. For ''any franchise in effect on October 30, 1984,'' section 622(g)(2)(B) excludes from the definition of ''franchise fee'' ''payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of [PEG] access facilities.'' There would have been no reason for Congress to grandfather in these PEG-related contributions for existing franchises if such payments were not otherwise included within the definition of ''franchise fees.'' In effect, excluding PEG-related contributions would read ''in the case of any franchise in effect on October 30, 1984'' out of section 622(g)(2)(B), extending this grandfathered exclusion to all franchises.

30. Some commenters claim that other sections of Title VI, including the section authorizing LFAs to require the designation of PEG channel capacity in section 611, override section 622's definition of ''franchise fee.'' As discussed above, we find these arguments unpersuasive. We also reject arguments that provisions of the Act unrelated to cable franchising demonstrate that PEG-related fees are not franchise fees. For example, section 623 of the Act, which governs the regulation of cable rates, instructs the Commission to take the following two factors (among others) into account when prescribing rate regulations:

> 1. The reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers; and
>
> 2. Any amount required to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise.

Commenters argue that the separate listing of franchise fees (in 1) and the costs of PEG franchise requirements (in 2) is evidence that franchise fees do not include PEG-related costs. We disagree. We note that that the question of which factors the Commission should consider in setting rate regulations is both legally and analytically distinct from the question of which costs are included as a franchise fee under section 622. Even if it were not, the separate listing of franchise fees and PEG-related exactions in section 623 does not indicate that Congress understood these categories to be mutually exclusive. In general, section 623(b) directs the Commission to consider several factors relating to cable operators' costs, revenue, and profits to ensure that the Commission sets ''reasonable'' rates. Ensuring that a rate is ''reasonable'' requires a full consideration of the costs borne by cable operators. Listing only franchise fees would fail to account for some of these costs, even under the interpretation

and, thus, is not inconsistent with our findings herein.

[32] PEG channels provide third-party access to cable systems through channels dedicated for use by the public, including local governments, schools, and non-profit and community groups. The Act provides for the creation and support of PEG channels in various ways, including by authorizing LFAs to require franchisees to designate channel capacity for PEG, and by excluding certain costs associated with PEG access facilities from the definition of franchise fees under section 622(g)(2).

[33] As explained below, ''PEG transport facilities'' are facilities that LFAs use to deliver PEG services from studios or other locations where the programming is produced to the cable headend.

[34] In some cases, LFAs require a grant or other monetary contribution earmarked for PEG-related costs. These monetary contributions are likewise subject to the five percent cap on franchise fees, unless otherwise excluded under section 622(g)(2). Section 622 exempts only the items delineated in (g)(2), and Congress did not distinguish between in-kind and monetary contributions, nor did it exempt monetary contributions earmarked for a purpose that would otherwise not be excluded under section 622(g)(2). Thus, we make clear that monetary contributions—like in-kind contributions—must be counted toward the franchise fee cap unless expressly exempt under section 622(g)(2).

adopted in this Order: Franchise fees and PEG costs only partially overlap, given that section 622(g)(2) excludes certain PEG-related exactions from the definition of franchise fees. We therefore find nothing inconsistent about the separate listing of franchise fees and PEG-related costs in section 623 and the interpretation of section 622(g) adopted in this Order. The same analysis applies to the bill-itemization requirements in section 622(c), which permits the separate itemization of franchise fees and PEG-related assessments in subscriber bills.[35]

31. Consistent with our tentative conclusions in the Second FNPRM, we conclude (1) that PEG support payments for any franchise in effect on October 30, 1984 and (2) PEG capital costs for any franchise granted after October 30, 1984 are exempt from the definition of franchise fee. As discussed above, two provisions of section 622(g)(2) exclude certain costs associated with PEG access facilities from the definition of ''franchise fee'' in section 622(g)(1): First, section 622(g)(2)(B) excludes PEG support payments, but only with respect to franchises granted prior to 1984. To the extent that any such franchises are still in effect, we affirm that under section 622(g)(2)(B), PEG support payments made pursuant to such franchises are excluded from the five percent franchise fee cap. Consistent with the statutory language and legislative history, we find this exclusion is broad in scope, and commenters did not dispute this interpretation in the record.[36]

32. Second, for any franchise granted after 1984, section 622(g)(2)(C) contains a narrower exclusion covering only PEG ''capital costs which are required by the franchise to be incurred by the cable operator for [PEG] access facilities.'' The Cable Act does not define ''capital costs''. We address the scope of this exclusion below by first clarifying the definition of ''capital costs'' and concluding that it can apply to contributions for both construction-related and non-construction-related contributions to PEG access facilities. We then determine that the record is insufficient to determine whether costs associated with providing PEG channel capacity are subject to this exclusion, and we discuss the application of the exclusion to PEG transport.

33. *Definition of ''capital costs.''* Although the Commission previously asserted with respect to section 622(g)(2)(C) that ''[c]apital costs refer to those costs incurred in or associated with the construction of PEG access facilities,'' we now revisit that interpretation and provide additional clarity on the definition of this term. As described below, we find that the term ''capital costs'' is not limited to construction-related costs; rather, it generally encompasses costs incurred in acquiring or improving capital assets for PEG access facilities. The Commission's previous reading of the phrase ''capital costs'' was based in part on section 622(g)'s legislative history, which states that the Cable Act excludes from the franchise fee cap ''the capital costs associated with the construction of [PEG] access facilities.'' The Sixth Circuit affirmed the Commission's prior reading in *Alliance,* where, rejecting a challenge to the Commission's construction of the term ''capital costs'' in the First Report and Order, the court held that:

> [t]o determine the permissibility of the Commission's construction of Section 622(g)(2)(C), we start by consulting the legislative history. During the enactment of this provision, Congress made clear that it intended section 622(g)(2)(C) to reach ''capital costs associated with the construction of [PEG] access facilities.'' H.R.Rep. No. 98–934, at 26 (emphasis added). Against this legislative pronouncement, the FCC's limitation of ''capital costs'' to those ''incurred in or associated with the construction of PEG access facilities'' represents an eminently reasonable construction of section 622(g)(2)(C).

34. We asked for additional comment on the definition of ''capital costs'' under section 622(g)(2)(C) in the Second FNPRM.[37] Arguably, the Commission's previous construction left unsettled the extent to which the ''capital costs'' exclusion encompassed PEG equipment—such as vans, studios, or cameras. In *Alliance,* the Sixth Circuit observed that the Commission's definition of capital costs could encompass the costs of such equipment, but only insofar as the equipment costs were ''relate[d] to the construction of PEG facilities.'' But neither the First Report and Order nor the legislative history from which it borrowed expressly limited capital costs to construction-related capital costs. Both statements are silent—or, at most, unclear—about the treatment of non-construction-related capital costs.

35. Based on the arguments in the record and our further consideration of the statutory text and legislative history we now conclude that the Commission's earlier statement regarding the definition of ''capital costs'' was overly narrow. As commenters note, many local governments receive payments from cable operators that are not simply for the construction of PEG studios, but also for, among other things, the acquisition of equipment needed to produce PEG access programming. LFAs argue for a broader definition of ''capital costs'' that would include PEG channel capacity and certain equipment costs associated with PEG access facilities.[38] By contrast, cable companies have urged the Commission to reaffirm, based on its previous statement, that ''capital costs'' are limited to costs associated with the construction of PEG access facilities (and thus do not include channel capacity and equipment such as cameras, or other equipment necessary to run a PEG access facility).

36. In general, when a term is undefined in a statute, courts look to that term's ''ordinary meaning.'' While there is no general definition of the precise term ''capital costs,'' Black's Law Dictionary defines a similar term,[39] ''capital expenditure,'' as ''[a]n outlay of funds to acquire or improve a fixed asset,'' and defines a ''fixed asset,'' or ''capital asset'' as ''[a] long-term asset used in the operation of a business or used to produce goods or services, such as equipment, land, or an industrial plant.'' Merriam-Webster similarly defines ''capital expenditure'' as ''costs that are incurred in the acquisition or improvement of property (as capital

[35] Several commenters raised section 622(c) as evidence that franchise fees do not include PEG-related assessments. We note that section 622(c) was adopted years after section 622(g) was enacted.

[36] The legislative history further supports this interpretation.

[37] The Second FNPRM noted that ''capital costs which are required by the franchise to be incurred by the cable operator for [PEG] access facilities'' are excluded from the definition of franchise fee, and sought comment on treating the costs of studio equipment as capital costs for the purpose of this exemption from the franchise fee cap.

[38] Similarly, several commenters argue that section 611's grant of authority to require PEG channels suggests that the cost of such channels cannot count toward the five percent franchise fee cap. We disagree with the notion that the Act's grant of authority to require designation for PEG use necessarily excludes the costs of PEG from the definition of franchise fees. As we note above, the fact that the Act authorizes LFAs to impose such obligations does not mean that the value of these obligations should be excluded from the five percent cap on franchise fees. Section 622 governs ''Franchise Fees'' and makes clear that any items not expressly excluded from that section's broad definition of franchise fees are included against the statutory cap. Section 622 excludes some—but not all—PEG-related costs.

[39] Costs and expenditures are related, but not identical, concepts. Black's Law Dictionary defines ''cost'' as ''the amount paid or charged for something; price or expenditure.'' Black's relevantly defines ''expenditure'' as ''a sum paid out.'' While we recognize that ''cost'' and ''expenditure'' have distinct meanings in the accounting context, for the purposes of our interpretation of section 622(g)(2)(C), we find that the meanings of these terms are highly analogous—*i.e.,* both pertain to expending resources to acquire a capital asset.

assets) or that are otherwise chargeable to a capital account,'' and defines ''capital assets'' as ''long-term assets either tangible or intangible (as land, buildings, patents, or franchises).'' An accounting textbook provides yet another similar definition:

> Expenditures for the purchase or expansion of plant assets are called capital expenditures and are recorded in asset accounts. . . . In brief, any material expenditure that will benefit several accounting periods is considered a capital expenditure. Any expenditure that will benefit only the current period or that is not material in amount is treated as a revenue expenditure.

We also note that capital costs are distinct from operating costs (or operating expenses), which are generally defined as expenses ''incurred in running a business and producing output.'' Reflecting this distinction, the Commission has distinguished between costs incurred in building of PEG facilities, which are capital costs, and costs incurred in using those facilities, which are not.

37. While we may also look to legislative history or other context in ascertaining a statute's meaning, none of these sources here compels a narrower definition than that set forth above. The legislative history is ambiguous: The passage relied on by the Commission in the First Report and Order, from a summary in the House Report, notes that ''capital costs associated with the construction of [PEG] access facilities are excluded from the definition of a franchise fee.'' But section 622(g)(2)(C) does not itself restrict capital costs to costs that are construction related, nor does this passage in the legislative history expressly say that the capital costs exclusion is limited to such costs. And, as some commenters recognize, not all capital costs related to PEG access facilities are related to construction: Studio equipment, vans, and cameras, often have useful lives of several years, and the costs of acquiring such equipment are often capitalized. Such costs therefore often fall within the ordinary meaning of capital costs. Had Congress wished to exclude such costs, it could have done so by narrowing the definition of ''capital costs'' in the statute.

38. Consistent with our analysis above, we find that the phrase ''capital costs'' in section 622(g)(2)(C) should be interpreted in a manner consistent with its ordinary meaning. Based on the definitions discussed above, the term ''capital cost'' generally would be understood to mean a cost incurred in acquiring or improving a capital asset. Because the ordinary meaning of this term is not limited to construction-related costs, we now find that the definition of ''capital costs'' as used in section 622(g)(2)(C) is not limited to costs ''incurred in or associated with the construction of PEG access facilities.'' We conclude that while capital costs include costs associated with the construction of PEG access facilities, they are not limited to such costs.[40]

39. The ordinary meaning of ''capital costs'' could encompass the acquisition of a non-construction-related capital asset—such as a van or a camera. Section 622(g)(2)(C) only excludes certain capital costs—those ''which are required by the franchise to be incurred by the cable operator for [PEG] access facilities.'' Section 602(16) defines PEG access facilities as ''channel capacity . . . and facilities and equipment for the use of such channel capacity.'' In the legislative history, Congress explains that ''[t]his may include vans, studios, cameras, or other equipment relating to the use of public, educational, or governmental channel capacity.'' Based on this statutory language and legislative history as well as the current record, we believe at the present time that the definition of ''capital costs'' in section 622(g)(2)(C) includes equipment purchased in connection with PEG access facilities, even if it is not purchased in conjunction with the construction of such facilities.[41] But, as both sections 622(g)(2)(c) and 602(16) make clear, the capital costs of such equipment may be excluded only insofar as they are for the use of PEG channel capacity.

40. This interpretation seems most faithful to the text of section 622(g)(2)(C), which does not restrict capital costs to those that are related to construction. We recognize that this interpretation reflects a broader sense of capital costs than described in the First Report and Order. To the extent that our interpretation in this document is inconsistent with the Commission's earlier statements about the capital cost exclusion, we find that the interpretation in this Order better comports with the Act's language, structure, and policy objectives.[42]

41. We disagree with NCTA's assertion that there would have been ''no good reason'' to grandfather PEG equipment—such as vans and cameras—if such equipment were ''subject to the permanent exception from franchise fees under section 622(g)(2)(C).'' The statute itself fully excludes PEG obligations for franchises in effect on October 30, 1984, but excludes only PEG-related capital costs for franchises granted after that date. The broader exclusion for existing franchises in section 622(g)(2)(B) reflects the legislative intent to grandfather the provisions of existing PEG franchises. Section 622(g)(2)(C) provides a narrower exclusion for new franchises than the broad exclusion enjoyed by grandfathered existing franchises; one would therefore expect these two exclusions to overlap, but not be coextensive. Even under our interpretation of section 622(g)(2)(C), section 622(g)(2)(B) remains a much broader exclusion than section 622(g)(2)(C): A number of costs—most notably, operating expenses—would still be excluded by section 622(g)(2)(B), but not by section 622(g)(2)(C).[43]

42. *PEG channel capacity.* While we find that the costs associated with the provision of PEG channel capacity are cable-related, in-kind costs that fall within the definition of ''franchise fee,'' we find that the record is insufficiently developed to determine whether such costs should be excluded from the franchise fee as a capital cost under the exemption in section 622(g)(2)(C). The Second FNPRM stated that, while the Act authorizes LFAs to require that channel capacity be designated for PEG use, this authorization does not necessarily remove the costs of such obligations from the five percent cap on franchise fees. In the record in this proceeding, cable operators generally agreed with this statement, and LFAs generally disagreed. As discussed above, the Act's authorization of a franchise obligation (*e.g.,* one related to PEG access facilities or I-Nets) does not remove that obligation from the five percent cap on franchise fees. It follows, then, that the costs associated with providing PEG channel capacity fall within this cap as a cable-related, in-kind contribution unless they are

[40] We agree with NATOA that franchising authorities should be given an opportunity to show that franchise fees are being spent on PEG capital costs if a cable operator requests an offset against franchise fees for non-monetary, cable-related franchise provisions.

[41] We note that this view was affirmed by the Sixth Circuit in *Alliance.*

[42] NCTA requests that we ''make clear that cable operators have the right to audit a franchising authority's use of the contributions and that a franchising authority must provide reasonable supporting documentation during an audit that such funds are, or were, being used for PEG capital expenses.'' We decline to do so. We find nothing in the Act that precludes a cable operator from auditing an LFA's use of PEG capital funds, nor do we find anything that gives a cable operator an audit right. We note that under section 635(b) of the Act, a court may award a cable operator the right to audit if the court finds that relief appropriate.

[43] Salaries and training are two examples of operating costs excluded by section 622(g)(2)(B), but not by section 622(g)(2)(C).

otherwise excluded under section 622(g)(2).[44]

43. LFAs claim that the costs of providing PEG channel capacity do fall within section 622(g)(2)(C)'s exclusion for PEG-related capital costs. In support, they point out that the Act defines ''[PEG] access facilities'' as ''(A) channel capacity designated for public, educational, or governmental use; and (B) facilities and equipment for the use of such channel capacity.'' Thus, they assert, because section 622(g)(2)(C) expressly applies to costs incurred by a cable operator for ''[PEG] access facilities,'' it necessarily applies to costs associated with PEG channel capacity. But, as the cable operators state, the Act's inclusion of channel capacity in the definition of ''[PEG] access facilities'' does not settle the question of whether channel capacity costs fall under section 622(g)(2)(C). This is because section 622(g)(2)(C) excludes only a particular subset of PEG access facility costs—capital costs—from the definition of franchise fees subject to the five percent cap, and cable operators claim that PEG channel capacity is not a capital cost. Moreover, even assuming that PEG channel capacity is not a capital cost and is therefore subject to the five percent cap, the record reveals serious difficulties regarding how to calculate the value of PEG channel capacity to account for this cost.[45]

44. Given this, we find that the questions raised by channel capacity are complex, and that the record is not developed enough to allow us to answer them. We therefore defer this issue for further consideration.[46] In the meantime, we find that the status quo should be maintained, and that channel capacity costs should not be offset against the franchise fee cap. This approach will minimize disruption and provide predictability to both local franchise authorities and cable operators.

45. *Limits on LFA Authority To Establish PEG Requirements.* While we do not reach a conclusion with respect to the treatment of PEG channel capacity, we reiterate here that sections 611(a) and 621(a)(4)(B) of the Act restrict the authority of LFAs to establish PEG channel capacity requirements. We discussed the limits imposed by section 611(a) in the First Report and Order. We noted that, while section 611(b) does not place a limit on the amount of channel capacity that a franchising authority may require, section 621(a)(4)(b) provides that a franchising authority may require ''adequate assurance'' that the cable operator will provide ''adequate'' PEG access channel capacity, facilities, or financial support. We determined that ''adequate,'' as used in the statute, should be given its ordinary meaning—''satisfactory or sufficient.''

46. In the Second FNPRM, the Commission again discussed the limits on franchising authority requirements for PEG channels under section 611(b), identifying PEG channel capacity as an in-kind contribution and seeking comment on the effects on cable operators and cable subscribers of ''allowing LFAs to seek unlimited'' PEG operating support and other cable-related, in-kind contributions. In response, commenters submitted examples of what they claim are LFA requirements for excessive numbers of PEG channels. LFAs responded with comments defending such requirements, as well as requirements for associated PEG support.

47. We note that many states have attempted to strike a balance between the costs of PEG channels to cable operators and the benefits of PEG channels to the public by imposing reasonable limits on PEG channel capacity. For example, some states have limited the number of PEG channels—typically to two or three. Others have required that PEG channels be returned if they are not substantially used. States have also tied the number of appropriate PEG channels to the size of the population served.

48. We decline the invitation by cable operators to establish fixed rules as to what constitutes ''adequate'' PEG channel capacity under section 621(a)(4)(B).[47] We recognize that the number of channels necessary to further the goals of the Cable Act might vary depending on, among other things, the number of subscribers within a franchise, the area covered by a franchise, the number of cable operators within a franchise, the area's population and geography, the cable-related community needs and interests, and whether PEG channel capacity is substantially used. In general, each of these factors is relevant in determining whether an LFA has exceeded its authority under section 621(a)(4)(B) by demanding more than ''adequate'' capacity.[48] We note that LFA demands for PEG capacity requirements that are more than ''adequate'' are subject to judicial challenge under section 635 of the Act, as well as other forms of relief. We also reserve the right to establish fixed rules in the future should there be widespread evidence of LFAs requiring more than adequate PEG channel capacity.

49. *PEG transport.* We find that the installation of transport facilities dedicated for long-term use by a PEG provider for the transmittal of recurring programming to a cable headend or other point in the cable system—PEG transport—does not count toward the

[44] One commenter notes that California law requires ''all video service providers''—a category broader than just cable providers—to ''designate a sufficient amount of capacity'' for the provision of PEG channels. Because this requirement applies to more than just cable operators, commenters argue, it is a fee of ''general applicability'' excluded under section 622(g)(2)(A) from the definition of franchise fee. The Eastern District of California recently held that a CPUC fee under the same California law was a fee of general applicability on these grounds. The Ninth Circuit recently vacated and remanded this ruling on other grounds. An assessment aimed only at cable or cable-like services would not fall within section 622(g)(2)(A)'s exclusion as a ''tax, fee, or assessment of general applicability.'' The text of section 622(g)(2)(A) of the Cable Act identifies a ''tax, fee, or assessment imposed on both utilities and cable operators or their services'' as a paradigmatic example of an assessment of ''general applicability.'' The legislative history further explains that an assessment of ''general applicability'' ''could include such payments as a general sales tax, an entertainment tax imposed on other entertainment business as well as the cable operator, and utility taxes or utility user taxes which, while they may differentiate the rates charged to different types of utilities, do not unduly discriminate against the cable operator as to effectively constitute a tax directed at the cable system.'' Here, the provision of PEG capacity appears to be an obligation specific to cable operators—the California law itself references the provision of PEG capacity by ''cable operator[s].'' We also note that the PEG authority provided in section 611 only applies to cable service, and that there are no PEG requirements under federal law for other video providers, like Direct Broadcast Service (DBS) or over-the-top streaming services. In any case, we need not settle the question whether a specific state law is of general applicability to determine whether the provision of PEG capacity, in general, falls within the definition of ''franchise fee.'' Accordingly, we decline to do so here.

[45] NCTA proposes valuing channel capacity at market cost; anything less, NCTA argues, would be an additional subsidy beyond the cost of the service itself. LFAs raise a host of problems with using the fair market value approach to value channel capacity.

[46] We encourage parties to supplement the record on the channel capacity issue. To the extent that we are provided sufficient information to answer the complex questions raised by channel capacity, we intend to resolve them in the next twelve months.

[47] As noted, the Commission concluded that ''adequate'' should be given its plain meaning, ''satisfactory or sufficient'' in the First Report and Order. The Sixth Circuit affirmed this interpretation.

[48] LFAs argue that relying on the section 621 ''adequate'' standard conflicts with the standards established by section 626 in the context of franchise renewals, which generally ask whether a renewal proposal is reasonable to meet the ''needs and interests'' of the community. We see no such conflict. Section 621 establishes ''General Franchise Requirements,'' and nothing in section 626 suggests that these general limits do not apply in the context of a franchise renewal. As NCTA points out, to find that franchise renewals are constrained only by section 626's ''needs and interests'' inquiry would mean, among other things, that franchise renewals would be unconstrained by the statutory cap on franchise fees in section 622.

five percent franchise fee cap. For the reasons explained above, we find that exempting capital costs from the five percent cap is consistent with the Act. The expenditure for the installation of a system that carries PEG programming from a PEG studio to a cable operator's headend facility is a capital expenditure because it is a long-term asset meant to deliver the programming. The ongoing costs associated with the maintenance or operation of that facility would not qualify as a capital expenditure, however, as these are operating costs that are necessary to run the business and produce output. NCTA requests that we declare PEG transport costs beyond ''a single PEG transport return line [that] is dedicated to connecting the PEG studio to the cable network or headend'' to count toward the five percent cap. Although we agree that the costs associated with the use of transport lines for ''episodic'' or ''short-term'' PEG programming is an operating cost that is subject to the franchise fee cap, we decline to establish a fixed quantity of PEG transport return lines that is ''adequate'' under section 621(a)(4)(B).[49] Like the number of PEG channels on a system, the number of adequate return lines in a franchise area might vary according to particular circumstances like the number of subscribers in the franchise area, the area covered by the franchise and the number of cable operators in the franchise. The number also might vary depending on the number of PEG channels provided in a franchise area and the types of programming offered over them. Nevertheless, any LFA requests for multiple transport connections dedicated for long-term PEG use that the cable operator considers to be more than ''adequate'' are subject to judicial challenge under section 635 of the Act.

50. We acknowledge the benefits of PEG programming and find that our interpretations adopted above are faithful to the policy objectives of the Cable Act. A significant number of comments in the record stressed these benefits, which include providing access to the legislative process of the local governments, reporting on local issues, providing a forum for local candidates for office, and providing a platform for local communities—including minority communities. Of course, Congress itself similarly recognized the importance of PEG programming by authorizing LFAs to require the provision of PEG channel capacity in the Cable Act, and by carving out certain costs of such programming from the five percent cap on franchise fees. Nothing in this proceeding disturbs the Commission's longstanding view that PEG programming serves an important role in local communities.

51. At the same time, the Cable Act seeks to encourage deployment and competition by limiting the franchise fees that LFAs may collect. These include limitations on imposing costs associated with the provision of PEG programming. A number of cable operators express concern with excessive LFA requirements for PEG channel capacity, support, and in-kind contributions. Altice, for example, notes that ''PEG operational contributions . . . are common and routinely treated as separate from the 5 percent franchise fee.'' Commenters likewise suggest that these excessive PEG-related demands can hinder competition and deployment.

52. The Cable Act itself, as interpreted in this Order, balances these costs and benefits. By excluding PEG-related capital costs from the five percent cap on franchise fees, but leaving other PEG-related exactions subject to that cap, the Cable Act divides the financial burden of supporting PEG programming between LFAs and cable operators. By counting a portion of these costs against the statutory cap on franchise fees that LFAs may collect, the Cable Act allows LFAs to seek support for PEG programming from cable operators, while guarding against the possibility that LFAs will make demands for such programming without regard to cost.

53. Some commenters have suggested that the proposals in the Second FNPRM threaten to eliminate or drastically reduce PEG programming.[50] We disagree. Significantly, any adverse impact of our ruling on PEG programming should be mitigated by (1) the expansion of the ''capital cost'' exclusion beyond merely capital costs associated with construction; and (2) our decision to defer ruling on whether the costs of channel capacity may be counted under this exclusion.[51] Under the interpretation adopted in this Order, cable operators will continue to provide support where an LFA chooses, but some aspects of that support will now be properly counted against the statutory five percent franchise fee cap, as Congress intended.[52] We recognize that this represents a departure from the longstanding treatment of PEG costs by LFAs and cable operators. We do not, however, believe that these conclusions will eliminate PEG programming. Nor do we believe that the existing practice was lawful merely because it was longstanding: the Commission's duty is to conform its rules to law, not tradition.

54. To the extent that existing practices are inconsistent with the law, LFAs will still have a choice: they can continue to receive monetary franchise payments up to the five percent cap, they can continue to receive their existing PEG support and reduce the monetary payments they receive, or they can negotiate for a reduction of both that fits within the bounds of the law that Congress adopted.

55. We find that the costs associated with the construction, maintenance, and service of an I-Net fall within the five percent cap on franchise fees. Such costs are cable-related, in-kind contributions that meet the definition of franchise fee. In particular, agreeing to construct, maintain, and provide I-Net service pursuant to the terms of a franchise agreement is necessarily cable-related, is an in-kind (*i.e.,* non-monetary) contribution imposed on a cable operator by a franchise authority, and is not included in one of the enumerated exceptions from the franchise fee in section 622(g)(2) of the Act. Thus, we believe that including such services in the franchise fee is consistent with the statute. As we tentatively concluded in the Second FNPRM, treating cable-related, in-kind contributions, such as I-Net requirements, as franchise fees would not undermine provisions in the Act that authorize or require LFAs to impose cable-related obligations on franchisees. We disagree with LFA commenters who argue that the cost of I-Nets should be excluded from the franchise fee. Although such commenters contend that ''[t]he Commission's proposal to

[49] We note, however, that NCTA cites a particularly egregious example of a ''transport line [that] is used once a year for a Halloween parade'' that seems well beyond what constitutes adequate facilities.

[50] This concern was also expressed in a number of letters from members of Congress.

[51] NATOA et al. say that these aspects of our decision will not have a mitigating impact on the availability of PEG programming. They suggest that this Order ''is not a boon to LFAs'' because it was already clear that both construction-related and non-construction-related PEG equipment costs are exempt from the franchise fee cap. This is incorrect. As we explain above, the scope of the PEG capital cost exemption previously was left unsettled. This Order clarifies that issue by finding that equipment costs unrelated to construction may be considered capital costs for purposes of section 622(g)(2)(C).

[52] Finally, a number of commenters argue that PEG requirements confer a benefit on the community, like buildout requirements, and therefore should similarly not be considered a ''contribution'' to LFAs. We find that PEG requirements are distinguishable from buildout requirements for the reasons discussed below. PEG requirements, unlike buildout requirements, are also specifically discussed in the definition of franchise fee.

require LFAs to pay for I-Nets . . . cannot be squared with the statute,'' it is entirely consistent with the statute to find that franchising authorities may impose cable-related requirements, such as requiring dedicated channel capacity on I-Nets, on cable operators, but also to find that funding for these franchise requirements applies against the five percent cap. Similar to our conclusion with respect to PEG support, while we acknowledge that I-Nets provide benefits to communities,[53] such benefits cannot override the statutory framework, which carves out only limited exclusions from franchise fees.

56. Further, as we conclude above, we disagree with commenters that section 611(b) of the Act, which authorizes LFAs to require that channel capacity on I-Nets be designated for educational and governmental use, should be interpreted to exempt the costs of I-Nets from franchise fees. There is no basis in the statutory text for concluding that section 611(b) imposes any limit on the definition of franchise fee. Moreover, section 622(g) defines what is included in the franchise fee, and section 622(g)(2) carves out only limited exclusions for PEG-related costs and does not exclude I-Net-related costs. As we observe above, since Congress enacted the PEG and I-Net provisions at the same time it added the franchise fee provisions, it could have explicitly excluded all costs related to I-Nets if it had intended they not count toward the cap.[54]

57. We conclude that franchise terms that require cable operators to build their systems to cover certain localities in a franchise area do not count toward the five percent cap.[55] As we explain herein, Title VI establishes a framework that reflects a fundamental bargain between the cable authority and franchising authority—a cable operator may apply for and obtain a franchise to construct and operate facilities in the local rights-of-way and, in exchange, an LFA may impose fees and other requirements as set forth in the Act. The statutory framework makes clear that the authority to construct a cable system is granted to the cable operator as part of this bargain and that the costs of such construction are to be borne by the cable operator. Specifically, section 621(a)(2)(B) of the Act provides that ''[a]ny franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, . . . except that in using such easements the cable operator shall ensure . . . that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both.'' Because the statute is clear that cable operators, not LFAs, are responsible for the cost of building out cable systems, it would be inconsistent with the statutory text and structure to count these costs as part of the franchise fee.[56] Both cable industry and LFA commenters generally support the contention that build-out obligations should not count toward the five percent franchise fee cap.[57]

58. We also conclude that franchise terms that require cable operators to comply with customer service standards do not count toward the five percent cap.[58] LFA commenters explain that cable operators are required to comply with customer service standards under federal or state law, and that cable franchises may include an obligation to comply with customer service standards. Notably, section 632 of the Act directs the Commission to ''establish standards by which cable operators may fulfill their customer service requirements,'' including ''at a minimum, requirements governing—(1) cable system office hours and telephone availability; (2) installations, outages, and service calls; and (3) communications between the cable operator and the subscriber (including standards governing bills and refunds.'' The Commission implemented this mandate in § 76.309 of its rules, which sets forth with specificity the customer service standards to which cable operators are required to adhere relating to cable system office hours and telephone availability, installations, outages and service calls, and communications between cable operators and cable subscribers. We find that franchise terms that require cable operators to adhere to customer service standards are not part of the franchise fee. In contrast to in-kind, cable-related contributions that are franchise fees subject to the statutory cap, such as the provision of free cable service to government buildings or PEG and I-Net support,[59] customer service obligations are not a ''tax, fee, or assessment'' imposed on a cable operator; they are regulatory standards that govern how cable operators are available to and communicate with customers. Indeed, as the legislative history explains, ''[i]n general, customer service means the direct business relation between a cable operator and a subscriber,'' and ''customer service requirements include requirements related to interruption of service; disconnection; rebates and credits to consumers; deadlines to respond to consumer requests or complaints the location of the cable operator's consumer service offices; and the provision to customers (or potential customers) of information on billing or services.'' Based on our review of the statutory text and legislative history, we find no indication that Congress intended that standards governing a cable operator's ''direct business relation'' with its subscribers should count toward the franchise fee cap. Apart from ACA, no commenter argued

[53] Anne Arundel County et al. contend that the obligation to provide I-Nets ''benefits not only the public, but also the cable operator, who is in a position to sell commercial services via I-Nets,'' and they argue that the Commission ''offers no explanation as to how such a mutually beneficial arrangement constitutes a tax.'' However, it is unclear from the record to what extent, if any, cable operators benefit from providing I-Nets.

[54] Anne Arundel County et al. suggests that our interpretation of the statute as it relates to I-Nets is somehow inconsistent with the Commission's holding in a 1996 open video systems order. Contrary to Anne Arundel County et al.'s assertion, the Commission did not conclude in the OVS Order that I-Nets were meant to be excluded from the franchise fee. Rather, that order affirmed the Commission's decision to preclude local franchising authorities from requiring open video system operators to build I-Nets, while also clarifying that this decision is not inconsistent with permitting the local franchising authority to require channel capacity on a network if an open video system operator does build one. As we explain above, it is entirely consistent with the statute to find that franchising authorities may impose cable-related requirements, such as requiring dedicated channel capacity on I-Nets, but also to find that funding for these requirements applies against the five percent cap.

[55] Build-out requirements are requirements that a franchisee expand cable service to parts or all of the franchise area within a specified period of time.

[56] Because the statute is clear with regard to cable operator responsibility for construction costs, we reject ACA's argument that ''build-out obligations should only be excluded [from the franchise fee] to the extent an LFA needs to meet its obligation under paragraph 621(a)(3)'' to assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

[57] While some LFA commenters disagree with distinguishing between build-out obligations and other cable-related contributions such as PEG and I-Net support based on which entities receive the benefit of such obligations or whether such obligations can be considered ''essential'' to the provision of cable services, because we have clarified the rationale for excluding build-out obligations, we do not need to address these arguments.

[58] In the Second FNPRM, we sought comment on whether there are other requirements besides build-out requirements that should not be considered contributions to an LFA.

[59] We clarify that if LFAs request build-out to an area that includes a public building, we would consider that to be a build-out requirement that is not subject to the franchise fee. However, we note that our conclusion with respect to build-out and customer service requirements is entirely separate from our findings regarding the provision of free or discounted services to public buildings and the provision of I-Net services. I-Net services as well as free or discounted services to public buildings are counted toward the franchise fee for the reasons explained above.

that customer service obligations should be included as franchise fees.[60]

59. As we explain in this section, we conclude that cable-related, in-kind contributions will count toward the five percent franchise fee cap at their fair market value. Because we conclude above that most cable related, in-kind contributions must be included in the franchise fee, cable operators and LFAs must assign a value to them. In our prior rulemakings, we did not provide guidance on how to value such contributions, but in the Second FNPRM, the Commission recognized that cable-related contributions could count toward the franchise fee cap at cost or at fair market value, and proposed to count toward the franchise fee cap at their fair market value.

60. Most critiques of applying fair market valuation in this context challenge how it could be applied to PEG channel capacity. But, as discussed above, we have not yet determined whether to assign the value of PEG channel capacity contributions toward the five percent franchise fee cap, and therefore we do not need to address these arguments.

61. We must address the value of other in-kind contributions, however, including free service to public buildings and I-Net contributions. We believe that fair market value, where there is a product in the market,[61] is the most reasonable valuation for in-kind contributions because it is easy to ascertain—cable operators have rate cards to set the rates that they charge customers for the services that they offer. Moreover, a fair market valuation ''reflects the fact that, if a franchising authority did not require an in-kind assessment as part of its franchise, it would have no choice but to pay the market rate for services it needs from the cable operator or another provider.'' [62] In contrast, valuing these in-kind contributions at cost would ''shift the true cost of an exaction from their taxpayer base at large to the smaller subset of taxpayers who are also cable subscribers.'' As we note above, Congress adopted a broad definition of franchise fee to limit the amount that LFAs may exact from cable operators. Accordingly, we conclude that a fair market valuation for in-kind contribution best adheres to Congressional intent.

62. The franchise fee rulings we adopt in this Order are prospective. Thus, cable operators may count only ongoing and future in-kind contributions toward the five percent franchise fee cap after the Order is effective. There is broad record support for applying the rulings prospectively; no commenter argues that our rulings should apply retroactively to allow cable operators to recoup past payments that exceed the five percent franchise fee cap. To the extent a franchise agreement that is currently in place conflicts with this Order, we encourage the parties to negotiate franchise modifications within a reasonable time.[63] If a franchising authority refuses to modify any provision of a franchise agreement that is inconsistent with this Order, that provision is subject to preemption under section 636(c).

63. Many LFAs express concern that our rulings could disrupt their budgets, which rely upon the franchise fees that they expect to receive. It is by no means clear from the record what fiscal choices remain available to the LFAs, but in any event, delaying the effect of our decision to address this concern would not be consistent with the statutory text. It is strongly in the public interest to prevent the harms from existing franchise agreements to continue for years until those agreements expire. In addition, the changes we adopt in this document were reasonably foreseeable because we largely adopt the tentative conclusions set forth in the Second FNPRM.[64] Finally, we note that LFAs can continue to benefit from their agreements by choosing to continue to receive their existing in-kind contributions, while reducing the monetary payments they receive.[65] Thus, consistent with the Act, we apply our rulings to future contributions cable operators make pursuant to existing franchise agreements.

64. In this section, we address the second issue remanded from the Sixth Circuit in *Montgomery County,* which relates to the Commission's mixed-use rule. As explained above, the court in *Montgomery County* found that the Commission, in its Second Report and Order and Order on Reconsideration, failed to identify a valid statutory basis for its application of the mixed-use rule to incumbent cable operators because the statutory provision on which the Commission relied to do so—section 602(7)(C) of the Act—applies by its terms only to Title II carriers, and ''many incumbent cable operators are not Title II carriers.'' The court thus vacated and remanded the mixed-use rule as applied to those cable operators, directing the Commission ''to set forth a valid statutory basis . . . for the rule as so applied.'' For the reasons set forth below, we adopt our tentative conclusion that the mixed-use rule prohibits LFAs from regulating under Title VI the provision of any services other than cable services offered over the cable systems of incumbent cable operators, except as expressly permitted in the Act.

65. Our conclusions regarding the scope of LFAs' authority to regulate incumbent cable operators' non-cable services, facilities, and equipment follow from the statutory scheme. Congress in Title VI intended, among other things, to circumscribe the ability of franchising authorities to use their Title VI authority to regulate non-cable services provided over the cable systems

[60] For the reasons discussed above, we disagree with ACA that the costs of complying with mandated customer service standards should be counted toward the franchise fee cap.

[61] We note that certain business or enterprise services may be comparable to I-Nets.

[62] This demonstrates the flaw in NATOA et al.'s argument that we must provide guidance on how to calculate fair market value. If the LFA believes that the cable operator's proposed valuation is too high, the LFA is free to forgo the in-kind contribution, accept a monetary franchise fee payment, and use the funds it received to purchase the good or service in the competitive marketplace.

[63] The City Coalition proposes that the parties should modify their franchises to comply with this Order via the franchise modification process set forth in section 625 of the Act. Under those procedures, an LFA has 120 days to make a final decision about a cable operator's request to modify a franchise agreement. We do not adopt this framework, however, because as NCTA points out, the parties may not modify PEG requirements under section 625, and therefore cable operators and LFAs could not use that procedure to bring franchise agreements into compliance in every case. Therefore, we encourage the parties to negotiate franchise modifications within a reasonable time and find that 120 days should be, in most cases, a reasonable time for the adoption of franchise modifications.

[64] Indeed, the lawfulness of excluding costs associated with PEG/I-Nets from the franchise fee cap has been under Commission scrutiny for more than a decade, and in 2008, the Sixth Circuit affirmed the Commission's determination as to new entrants that PEG related costs which do not qualify as capital costs are subject to the franchise fee cap. Therefore, we find Anne Arundel County's argument that this ''decision represents [an] 'unexpected surprise''' to be unfounded.

[65] Take, for example, a franchise agreement that requires a cable operator to deliver free cable service to all municipal buildings and contribute a monetary payment of five percent of its gross revenues derived from the operation of its cable system to provide cable services. In that case, the LFA may wish to either (1) continue to receive the existing free cable service and a monetary payment of five percent minus the fair market value of that service, or (2) discontinue service and receive a monetary payment of five percent, or (3) reduce the free cable service to select municipal buildings and receive a monetary payment of the five percent minus the fair market value of the reduced service. However, what an LFA may not do is ask a cable operator to ''voluntarily'' waive the statutory cap by asking it to continue providing free cable service to all municipal buildings and contribute the five percent monetary payment, or request that a cable operator waive anything else under the statute as interpreted by the Commission. Accordingly, we reject the request of NATOA that we clarify that this Order ''is permissive not mandatory.'' Complying with the terms of the statute is not optional.

of cable operators and the facilities and equipment used to provide those services. As explained below, the legislative history of the 1984 Cable Act and subsequent amendments to Title VI reflect Congress's recognition that cable operators potentially could compete with local telephone companies in the provision of telecommunications service and its intent to maintain the then-existing status quo concerning regulatory jurisdiction over cable operators' non-cable services, facilities, and equipment. Under the status quo, regulation of non-cable services provided over cable systems, including telecommunications and information services, was the exclusive province of either the Commission or state public utility commissions.[66]

66. *The Mixed-Use Rule Prohibits LFAs From Regulating Under Title VI the Non-Cable Services, Facilities, and Equipment of Incumbent Cable Operators That Are Also Common Carriers.* As an initial matter, we reaffirm the Commission's application of the mixed-use rule to prohibit LFAs from using their cable franchising authority to regulate any services other than cable services provided over the cable systems of any incumbent cable operator that is a common carrier,[67] with the exception of channel capacity on I-Nets.[68]

67. As noted above, the Commission in the First Report and Order found that the then-existing operation of the local franchising process constituted an unreasonable barrier to new entrants in the marketplace for cable services and to their deployment of broadband, in violation of section 621(a)(1) of the Act. The Commission adopted the mixed-use rule with respect to new entrants to address this unreasonable barrier. It provides, in relevant part that LFAs' jurisdiction applies only to the provision of cable services over cable systems. In particular, to the extent a cable operator provides non-cable services and/or operates facilities that do not qualify as a cable system, it is unreasonable for an LFA to refuse to award a franchise based on issues related to such services or facilities. For example, an LFA may not use its video franchising authority to attempt to regulate an entire network beyond the provision of cable services.

68. The Commission in the Second Report and Order extended to incumbent cable operators several rules adopted in the First Report and Order, including the mixed-use rule. Although, as noted, the Sixth Circuit in *Montgomery County* vacated and remanded the Commission's application of the mixed-use rule with respect to incumbent cable operators that are not common carriers, it left undisturbed application of the rule to incumbent cable operators that are also common carriers.[69] Consistent with the court's ruling, therefore, we adopt our tentative conclusion and reaffirm that the mixed-use rule prohibits LFAs from regulating the provision of non-cable services offered over the cable systems of incumbent cable operators that are common carriers.[70]

69. Our interpretation is consistent with the text of section 602(7)(C), which excludes from the term ''cable system'' ''a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act.'' We are not persuaded by assertions to the contrary. Anne Arundel County et al. argues, for example, that a cable operator's provision of telecommunications services via its cable system (either directly or through a subsidiary) ''does not . . . suddenly [transform its cable system] into a Title II facility'' for purposes of applying the section 602(7)(C) common carrier exception. City of Philadelphia et al. similarly argues that the common carrier exception in section 602(7)(C) was meant to protect Title II common carriers from regulation by LFAs under their Title VI franchising authority and thus cannot reasonably be read to apply to any cable operator that provides Title II and other non-cable services over a system that is a cable system.

70. To the extent these commenters argue that section 602(7)(C) precludes LFAs only from regulating non-cable services provided over the facilities of incumbent local exchange carriers that subsequently begin to provide cable service, we find such argument is not supported by the language of the statute. As noted in the Second FNPRM, although new entrants into the cable services market may confront obstacles different from those of incumbent cable operators, the statute makes no distinction between these types of providers. In the absence of any textual basis for treating incumbent cable operators that provide telecommunications services differently from new entrants that do so, we conclude that a facility should be categorized as ''a facility of a common carrier'' under section 602(7)(C) so long as it is being used to provide some type of telecommunications service, irrespective of whether the facility was originally deployed by a provider that historically was treated as a ''common carrier.''

71. This interpretation also is consistent with the legislative history of the 1984 Cable Act. Although, as City of Philadelphia et al. points out, one of the concerns expressed in the legislative history was the potential that cable operators' provision of telecommunications services could enable large users of such services to bypass the local telephone companies and thereby threaten universal service, the legislative history also reflects Congressional recognition that ''ultimately, local telephone companies and cable companies could compete in all communications services.'' The legislative history clarifies, moreover, that Congress intended the 1984 Cable Act to ''maintain[] [then-]existing regulatory authority over all . . . communications services offered by a cable system, including . . . services that could compete with communications services offered by telephone companies.'' Indeed, the legislative history is replete with statements reflecting Congress's intent to preserve the then-status quo regarding the ability of federal, state, and local authorities to regulate non-cable services provided via cable systems. In light of its stated intention to maintain the jurisdictional status quo,

[66] Specifically, the Commission historically has had jurisdiction over interstate telecommunications and information services. States have had jurisdiction over intrastate telecommunications services but not information services, which are jurisdictionally interstate. We thus reject the City of Eugene's suggestion that maintaining the ''status quo'' supports broad state and local authority over non-cable services provided via cable systems.

[67] ''Non-cable'' services offered by cable operators include telecommunications services and non-telecommunications services. Telecommunications services offered by cable operators include, for example, business data services, which enable dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections, and wireless telecommunications services. Non-telecommunications services offered by cable operators include, but are not limited to, information services (such as broadband internet access services), private carrier services (such as certain types of business data services), and Wi-Fi services. Cable operators also may offer facilities-based interconnected Voice over Internet Protocol (VoIP) service, which the Commission has not classified as either a telecommunications service or an information service, but which is not a cable service.

[68] Nothing in this Order is intended to limit LFAs' express authority under section 611(b) of the Act to require I-Net capacity.

[69] Under section 3(51) of the Act, a ''provider of telecommunications services'' is a ''telecommunications carrier,'' which the statute directs ''shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services.'' Thus, to the extent that an incumbent cable operator provides telecommunications service, it would be treated as a common carrier subject to Title II of the Act with respect to its provision of such telecommunications service.

[70] NCTA asserts that many cable operators currently provide telecommunications services.

we find that Congress intended via section 602(7)(C) to preclude LFAs from regulating under Title VI the provision of telecommunications services by incumbent cable operators, services that historically have been within the exclusive purview of the Commission (with respect to interstate services) or state public utility commissions (with respect to intrastate services).[71] Moreover, section 602(7)(C) broadly states that, with narrow exceptions, the facility of a common carrier is only ''considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers,'' and therefore not with respect to provision of any other services. For these reasons, we see no basis for altering our previous conclusion, as upheld by the Sixth Circuit,[72] that the mixed-use rule prohibits LFAs from exercising their Title VI authority to regulate the provision of non-cable services provided via the cable systems of incumbent cable operators that are common carriers, except as otherwise provided in the Act.

72. *The Mixed-Use Rule Prohibits LFAs From Regulating Under Title VI the Non-Cable Services, Facilities, and Equipment of Incumbent Cable Operators That Are Not Common Carriers.* We also adopt our tentative conclusion that LFAs are precluded from using their Title VI franchising authority to regulate the non-cable services (*e.g.,* information services such as broadband internet access) of incumbent cable operators that do not provide telecommunications services. As directed by the court, we explain herein our statutory bases for concluding that LFAs lack authority under Title VI to regulate non-cable services of incumbent cable operators that do not provide telecommunications services.

73. Section 624 of the Act, which principally governs franchising authority regulation of services, facilities, and equipment, provides in subsection (a) that ''[a] franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with [Title VI of the Act].''[73] The subsequent provision, section 624(b)(1), provides that franchising authorities ''may not . . . establish requirements for video programming or other information services.''[74] Although the term ''information service'' is not defined in section 624, the legislative history of that provision distinguishes ''information service'' from ''cable service.'' In particular, the legislative history explains that ''[a]ll services offered by a cable system that go beyond providing generally-available video programming or other programming are not cable services'' and ''a cable service may not include 'active information services' such as at-home shopping and banking that allows transactions between subscribers and cable operators or third parties.''

74. We find significant that the description of the term ''information services'' in the legislative history (*i.e.,* ''services providing subscribers with the capacity to engage in transactions or to store, transfer, forward, manipulate, or otherwise process information or data [which] would not be cable services'') aligns closely with the 1996 Telecommunications Act's definition of ''information service'' codified in section 3(24) of the Act (*i.e.,* ''the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications''). We conclude, therefore, that for purposes of applying section 624(b), interpreting the term ''information services'' to have the meaning set forth in section 3(24) of the Act is most consistent with Congressional intent.[75] Because the Commission has determined that broadband internet access service is an ''information service'' under section 3(24),[76] we likewise find that section 624(b)(1) precludes LFAs from regulating broadband internet access provided via the cable systems of incumbent cable operators that are not common carriers. Moreover, even if the definition set forth in section 3(24) was not the intended definition of ''information services'' for purposes of section 624(b)(1), the highly analogous descriptions of this term in the legislative history of the 1984 Act also would apply to broadband internet access service. Thus, in either case, LFAs may not lawfully impose fees for the provision of information services (such as broadband internet access) via a franchised cable system or require a franchise (or other authorization) for the provision of information services via such cable system.[77] We also clarify that LFAs and other state and local governmental units cannot impose additional requirements on mixed-use ''cable systems'' in a manner inconsistent with this Order and the Act under the pretense that they are merely regulating facilities and equipment rather than information services.[78]

75. Although we recognize that a later provision, section 624(b)(2)(B), permits franchising authorities to enforce requirements for ''broad categories of video programming or other services,'' when read together with the specific injunction against regulation of ''information services'' in section 624(b)(1), we find that it would be unreasonable to construe section 624(b)(2)(B) as authorizing LFA regulation of information services when (b)(1) precludes franchising authorities from regulating such services.[79] As we noted in the Second FNPRM, the legislative history explains that section 624(b)(2)'s grant of authority ''to enforce

[71] This interpretation is reinforced by both the text of section 621(b)(3) of the Act and its legislative history (relating to the provision of telecommunications services by cable operators), which Congress added to Title VI through the Telecommunications Act of 1996. The fact that section 621(b)(3) seeks to protect incumbent cable operators from LFA regulation under Title VI when they provide certain non-cable services, *i.e.,* telecommunications services, further undermines LFAs' assertion that the common carrier exception in section 602(7)(C) was intended to shield from LFA regulation only the provision of non-cable services by new entrants.

[72] Certain LFA advocates appear to concede that the Act precludes LFAs from regulating under Title VI a cable operator's provision of telecommunications services via its cable system.

[73] 47 U.S.C. 544(a).

[74] While the preamble to section 624(b) specifically limits the provision to franchises ''granted after the effective date of this title'' and therefore appears to grandfather local regulation of information services that may have occurred prior to 1984, when Title VI took effect, we note that very few franchises in effect today were granted prior to that year.

[75] The fact that the ''information services'' definition in section 3(24) of the Act was enacted as part of the 1996 Act—more than ten years after Congress passed section 624(b)—supports our conclusion that LFAs lack authority under section 624(b)(1) to regulate information services. The absence in Title VI of specific references to the section 3(24) definition of ''information service'' suggests only that Congress, in passing the 1996 Act, did not wish to re-open the 1984 Cable Act; it does not indicate that Congress intended to grant LFAs general authority to regulate information services.

[76] The Commission in 2018 reinstated the ''information service'' classification of broadband internet access service.

[77] Application of the mixed-use rule to broadband internet access service is not tied to the Commission's classification of broadband as an information service. Under the Commission's prior conclusion in 2015 that broadband internet access service is a Title II telecommunications service, the mixed-use rule would apply based on the provisions of Title VI for the reasons explained above.

[78] For this reason, we reject assertions that section 624's grant of authority to ''establish'' and ''enforce'' certain requirements for facilities and equipment would permit LFAs to bypass the statutory prohibition on regulation of information services.

[79] We note further that the limitation on the ability of franchising authorities to establish requirements under section 624(b)(1) extends specifically to ''information services,'' whereas the authority granted to franchising authorities in section 624(b)(2) makes no mention of ''information services.''

requirements . . . for broad categories of video programming or other services'' was intended merely to ''assure[] the franchising authority that commitments made in an arms-length situation will be met,'' while protecting the cable operator from ''being forced to provide specific programming or items of value which are not utilized in the operation of the cable system.'' Reading these provisions together, it is apparent that Congress intended to permit LFAs to enforce franchise requirements governing ''other services'' under (b)(2), but only to the extent they are otherwise permitted to establish such requirements under (b)(1).[80] Because LFAs lack authority to regulate information services under section 624(b)(1), they may not lawfully enforce provisions of a franchise agreement permitting such regulation under section 624(b)(2), even if such provisions resulted from arms-length negotiations between the cable operator and LFA.[81] That is, the grant of authority to ''enforce'' certain requirements under section 624(b)(2)(B) does not give franchising authorities an independent right to impose requirements that they otherwise may not ''establish'' under section 624(b)(1). We thus reject claims to the contrary.

76. As discussed above, Congress in the 1984 Cable Act intended to preserve the status quo with respect to federal, state, and local jurisdiction over non-cable services, which lends further support to our conclusion that LFAs may not use their cable franchising authority to regulate information services provided over a cable system. Because information services that are interstate historically have fallen outside the lawful regulatory purview of state and local authorities,[82] including LFAs, construing section 624(b) to bring those services within the scope of permissible LFA authority under Title VI would be fundamentally at odds with Congressional intent. For this reason, we reject City of Philadelphia et al.'s contention that our application of the mixed-use rule is barred by the Act because ''[t]he 'regulatory and jurisdictional status quo' in 1984 . . . included [LFAs'] use of the franchise and franchise agreement to regulate . . . cable systems that [Congress] recognized were carrying both cable services and non-cable communications services.'' The statutory design as reflected in other provisions of Title VI reinforces our conclusion that LFAs are precluded under section 624(b)(1) from regulating non-cable services provided over the cable systems of incumbent cable operators that are not common carriers. LFAs, therefore, may not lawfully regulate the non-cable services of such cable operators, including information services (such as broadband internet access), private carrier services (such as certain types of business data services), and interconnected VoIP service.[83] For example, this precludes LFAs from not only requiring such a cable operator to pay fees or secure a franchise to provide broadband service via its franchised cable system, but also requiring it to meet prescribed service quality or performance standards for broadband service carried over that cable system.

77. We find unconvincing arguments that the statute compels a broader reading of LFAs' authority under Title VI to regulate cable operators' non-cable services, facilities, and equipment. Anne Arundel County et al. maintains, for example, that because section 624(a) grants LFAs authority to regulate a ''cable operator,'' a term the Act defines as ''[a] person . . . who provides cable service over a cable system,'' LFAs generally are authorized to regulate any of the services provided by a ''cable operator'' over a ''cable system,'' including non-cable services.[84] Anne Arundel County et al. contends further that under section 624(b), LFAs ''to the extent related to the establishment or operation of a cable system . . . may establish requirements for facilities and equipment'' and argues that the Act cannot be construed as limiting LFAs' jurisdiction to cable services since it permits LFAs to require, for example, build out and institutional networks. We disagree with these arguments. Although, as Anne Arundel County et al. and others note, the Act in certain circumstances permits LFAs to impose on cable operators certain requirements that are not strictly related to the provision of cable service, such circumstances constitute limited exceptions to the general prohibition on LFA regulation of non-cable services contained in section 624.[85] They also do not override the specific prohibition on regulation of information services set forth in section 624(b)(1). This interpretation accords with one of the 1984 Cable Act's principal purposes to ''continue[] reliance on the local franchising process as the primary means of cable television regulation, while defining and limiting the authority that a franchising authority may exercise through the franchise process.''

78. We also conclude, contrary to the assertions of some commenters, that it would conflict with Congress's goals in the Act to permit LFAs to treat incumbent cable operators that are not common carriers differently from incumbent cable operators and new entrants that are common carriers in their provision of information services, including broadband internet access service. As we noted in the Second FNPRM, incumbent and new entrant cable operators (whether or not they are also common carriers) often compete in the same markets and offer nearly identical services to consumers. Thus, to allow LFAs to regulate the latter group of providers more strictly, such as by subjecting them to franchise and fee requirements for the provision of non-cable services, could place them at a

[80] Although the legislative history provides examples of ''broad categories of video programming,'' it does not specify what services are encompassed within the phrase ''other services'' for purposes of applying section 624(b)(2)(B). Although the phrase ''other services'' is ambiguous, it would be unreasonable to conclude that Congress intended for it to include services, such as information services, that franchising authorities are not empowered to regulate under section 624. Rather, we find it more reasonable to construe the phrase as referring to services that franchising authorities lawfully could require under Title VI, such as the provision of PEG channels and I-Net capacity. We, therefore, reject Anne Arundel County et al.'s assertion that the term ''other service'' in section 624(b)(2)(B) includes information services.

[81] We thus disagree with City Coalition's contention that ''[i]f . . . a cable operator agrees to undertake obligations regarding information services though arms-length negotiation—be they obligations regarding facilities that are not part of the cable system or obligations regarding noncable services—then a LFA may enforce those obligations.''

[82] The Commission has determined that the term ''information service'' has essentially the same meaning as the term ''enhanced service'' for purposes of applying the Act. Moreover, even assuming that LFAs at the time Congress passed the 1984 Cable Act used their cable franchising authority to regulate non-cable services as City of Philadelphia et al. asserts, the provisions of section 624 plainly evidence Congressional intent to treat pre- and post-Act cable franchises differently.

[83] Although interconnected VoIP service has not been classified by the Commission, LFA regulation of this service is prohibited under the mixed-use rule, as clarified in this Order, regardless of whether it is deemed a telecommunications service or an information service.

[84] Insofar as Anne Arundel County et al. is arguing that ''once a cable operator, always a cable operator,'' and ''once a cable system, always a cable system,'' *i.e.,* that when a cable operator deploys facilities, those facilities remain part of a cable system even when used to provide non-cable services, we disagree with that assertion. Consistent with our interpretation of section 602(7)(C) above, we find that a more reasonable reading of the statute is that the nature of facilities (*i.e.,* ''cable system'' or not) depends on how the facilities are used, not on whether the provider offered cable service at the time the facilities were deployed.

[85] NATOA et al. agree that the grant to LFAs of authority to require I-Nets is an exception from the general injunction in section 621(b)(3)(D) against requiring cable operators to provide telecommunications services or facilities. NATOA eta l. also appear to concede that section 624(b) precludes LFAs from regulating under Titled VI information services provided over cable systems.

competitive disadvantage.[86] A report submitted by NCTA asserts, for example, that two fixed broadband providers may build out their networks differently, with one utilizing wireless backhaul and the other using landline backhaul, but ''if one has inputs subjected to [fees] and the other does not, the differential . . . treatment can distort competition between the two, even when the services provided . . . are indistinguishable to the consumer.'' The distortion to competition that stems from ''hampering a subset of competitors,'' in turn, reduces the incentives of those competitors to invest in cable system upgrades for the provision of both cable and non-cable services, which could thwart the 1996 Act's goals to promote competition among communications providers and secure lower prices and higher quality services for consumers.[87] Such regulations, moreover, impede the Commission's development of a ''consistent regulatory framework across all broadband platforms,'' which is ''[o]ne of the cornerstones of [federal] broadband policy.'' [88]

79. We also are not convinced by arguments that interpreting the Act to bar LFAs from regulating non-cable facilities and equipment placed in public rights-of-way would pose a safety risk to the public because cable operators would have unfettered discretion to install non-cable facilities without review or approval by local authorities. Section 636(a) of the Act specifically provides that ''[n]othing in [Title VI] shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of [Title VI].'' This provision, which is an express exception to Title VI's general prohibition on franchising authority regulation of non-cable facilities and equipment, thus permits LFAs to impose requirements on non-cable facilities and equipment designed to protect public safety, so long as such requirements otherwise are consistent with the provisions of Title VI.

80. As noted above, Title VI does not permit franchising authorities to extract fees or impose franchise or other requirements on cable operators insofar as they are providing services other than cable services. Ample record evidence shows, however, that some states and localities are purporting to assert authority to do so outside the limited scope of their authority under Title VI. These efforts appear to have followed the decision by the Supreme Court of Oregon in *City of Eugene* v. *Comcast,* which upheld a local government's imposition of an additional seven percent ''telecommunications'' license fee on the provision of broadband services over a franchised cable system with mixed use facilities. To address this problem, we now expressly preempt any state or local requirement, whether or not imposed by a franchising authority, that would impose obligations on franchised cable operators beyond what Title VI allows.[89] Specifically, we preempt (1) any imposition of fees on a franchised cable operator or any affiliate using the same facilities franchised to the cable operator [90] that exceeds the formula set forth in section 622(b) of the Act and the rulings we adopt in this document, whether styled as a ''franchise'' fee, ''right-of-access'' fee, or a fee on non-cable (*e.g.,* telecommunications or broadband) services, and (2) any requirement that a cable operator with a Title VI franchise secure an additional franchise or other authorization to provide non-cable services via its cable system.[91] We base these conclusions on Congress's express decision to preempt state and local laws that conflict with Title VI of the Communications Act (section 636(c)), the text and structure of Title VI and the Act as a whole, Congressional and Commission policies (including the policy of nonregulation of information services), and the Supremacy Clause of the U.S. Constitution.[92]

81. *Authority to Preempt.* Congress has the authority to preempt state law under Article VI of the U.S. Constitution. While Congress's intent to preempt sometimes needs to be discerned or implied from a purported conflict between federal and state law, here Congress spoke directly to its intent to preempt state and local requirements that are inconsistent with Title VI. This express preemption extends beyond the actions of any state or local franchising authority. Section 636(c) of the Act provides that ''any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be

[86] As NCTA notes, under the First Report and Order, LFAs may not lawfully require a telecommunications carrier with a preexisting right to access public rights-of-way for the provision of telecommunications services, to secure a Title VI franchise to provide non-cable services over its network. We agree with NCTA that a cable operator with a preexisting right to access public rights-of-way for the provision of cable service likewise should not be required to obtain a separate authorization to provide non-cable services over its cable system, given that there is no incremental burden on the rights-of-way.

[87] We find no record basis for concluding that these concerns are raised only with respect to incumbent cable operators, and not new entrants.

[88] The fact that section 602(7)(C) excludes from the term ''cable system'' a facility of a common carrier subject to Title II of the Act does not persuade us that Congress intended to permit LFAs to regulate incumbent cable operators that are not common carriers differently from incumbent cable operators and new entrants that are common carriers in their provision of non-cable services. Rather, given Congress's desire in the Act to ensure ''competitively neutral and nondiscriminatory'' regulation, we find that section 602(7)(C)'s carve out of Title II facilities from the definition of ''cable system'' merely evinces Congressional intent to preclude franchising authorities from regulating any telecommunications services carried over a cable system.

[89] Such preemption applies to the imposition of duplicative taxes, fees, assessments, or other requirements on affiliates of the cable operator that utilize the cable system to provide non-cable services.

[90] For example, a cable operator may provide voice or broadband services through affiliates, and an LFA could not impose duplicative fees on those affiliates.

[91] We do not set forth an exhaustive list of state and local laws and legal requirements that are deemed expressly preempted. Rather, we simply clarify that state and local laws and other legal requirements are preempted to the extent that they conflict with the Act and the Commission's implementing rules and policies. As discussed in paragraph below, such preempted requirements include those expressly approved in *Eugene.*

[92] Contrary to some assertions in the record, we find that the Second FNPRM provided adequate notice to interested parties that the Commission could exercise its preemption authority under section 636(c) to address local regulation of non-cable services outside Title VI. In support of its tentative conclusion that ''[s]ection 624(b) of the Act prohibits LFAs from using their franchising authority to regulate the provision of information services, including broadband internet access service,'' the Second FNPRM specifically cited section 636(c) and set forth the text of that provision nearly verbatim. In addition, the Commission in the Second FNPRM tentatively concluded that preempted ''entry and exit restrictions'' include requirements that an incumbent cable operator obtain a franchise to provide broadband internet access service and that LFAs therefore are expressly preempted from imposing such requirements. The Commission sought comment on that tentative conclusion and on ''whether there are other regulations imposed by LFAs on incumbent cable operators' provision of broadband internet access service that should be considered entry and exit restrictions, or other types of economic or public utility-type regulations, preempted by the Commission.'' Such regulations include duplicative fee and franchise requirements imposed by franchising authorities such as the City of Eugene, which is a ''governmental entity empowered by . . . [s]tate [] or local law to grant a [cable franchise].'' Indeed, the fact that multiple LFA advocates recognized that the Second FNPRM could be read to seek comment on the Commission's authority to preempt requirements imposed outside Title VI contradicts claims that the Second FNPRM did not adequately apprise parties of the possible scope of the Commission's preemption ruling. Moreover, the fact that cable commenters in this proceeding referenced section 636(c) as a potential basis for our preemption ruling demonstrates that such ruling is a ''logical outgrowth'' of the Second FNPRM.

preempted and superseded.'' [93] The reference in section 636(c) to ''this chapter'' means that Congress intended to preempt any state or local law (or any franchise provision) that is inconsistent with any provision of the Communications Act, whether or not codified in Title VI.[94] Moreover, section 636(c) applies broadly to ''any [inconsistent] provision of law'' of ''any State, political subdivision, or agency thereof.'' [95] That means that Congress intended that states and localities could not ''end-run'' the Act's limitations by using other governmental entities or other sources of authority to accomplish indirectly what franchising authorities are prohibited from doing directly.[96]

82. Where Congress provides an express preemption provision such as section 636(c), the Commission has delegated authority to identify the scope of the subject matter expressly preempted and assess whether a state's law falls within that scope. The Commission may, therefore, expressly bar states and localities from acting in a manner that is inconsistent with both the Act and the Commission's interpretations of the Act, so long as those interpretations are valid. We therefore disagree with assertions that the Commission lacks authority to preempt non-cable regulations imposed by states and localities pursuant to non-Title VI sources of legal authority.

83. *Scope of Preemption.* The Commission's task, then, in interpreting the scope of preemption under section 636(c) is to determine whether specific state or local requirements are inconsistent with Title VI or other provisions in the Communications Act. Looking at the provisions of Title VI and the Act as a whole, we have little trouble concluding that Congress did not intend to permit states, municipalities, or franchising authorities to impose fees or other requirements on cable operators beyond those specified under Title VI, under the guise of regulating ''non-cable services'' or otherwise restricting a cable operator's construction, operation, or management of facilities in the rights-of-way.

84. As an initial matter, we note that Title VI establishes a framework that reflects the basic terms of a bargain—a cable operator may apply for and obtain a franchise to access and operate facilities in the local rights-of-way, and in exchange, a franchising authority may impose fees and other requirements as set forth and circumscribed in the Act. So long as the cable operator pays its fees and complies with the other terms of its franchise, it has a license to operate and manage its cable system free from the specter of compliance with any new, additional, or unspecified conditions (by franchise or otherwise) for its use of the same rights-of-way.

85. The substantive provisions of Title VI make the terms of this bargain clear. For starters, section 621(a)(1) provides franchising authorities with the right to grant franchises, and section 621(a)(2) explains that such franchises ''shall be construed to authorize the construction of a cable system over public rights-of-way . . .'' A ''cable operator,'' in turn, may not provide ''cable service'' unless the cable operator has obtained such a franchise. Other provisions make clear that a franchise does not merely authorize the construction of a cable system, but also the ''management and operation of such a cable system,[97] including the installation of Wi-Fi and small cell antennas attached to the cable system.''

86. The right to construct, manage, and operate a ''cable system'' does not mean merely the right to provide cable service.[98] Numerous provisions in Title VI evidence Congress's knowledge and understanding that cable systems would carry non-cable services—including telecommunications and information services. The definition of ''cable system,'' for example, anticipates that some facilities may carry both telecommunications and cable services. With respect to information services, section 601 of the Act provides that one of Title VI's purposes is to ''assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public.'' And, as we have already seen, Congress expressly provided in section 624(b) for ''mixed-use'' facilities that carry both cable services and ''video programming or other information services.''

87. The legislative history reinforces the conclusion that Congress understood that a franchised ''cable system'' would carry both cable and non-cable services. The House Report, for example, explains that ''[t]he term 'cable system' is not limited to a facility that provides only cable service which includes video programming. Quite the contrary, many cable systems provide a wide variety of cable services and other communications services as well. A facility would be a cable system if it were designed to include the provision of cable services (including video programming) along with communications services other than cable service.''

88. The point is that Congress was well aware that ''cable systems'' would be used to carry a variety of cable and non-cable services. It follows that Congress could have, if it wanted, provided significant leeway for states, localities, and franchising authorities to tax or provide other regulatory restrictions on a cable system's provision of non-cable services in exchange for the cable operator receiving access to the rights-of-way. But as it turns out, the balance of Title VI makes clear that Congress sharply circumscribed the authority of state or local governments to regulate the terms of this exchange. In this document, we make clear that, under section 636(c), states, localities, and franchising authorities may not impose fees or restrictions on cable operators for the provision of non-cable services in connection with access to such rights-of-way, except as expressly authorized in the Act. We provide further explanation in two critical areas to clarify that these categories of state and local restrictions are preempted: (a) Additional franchise fees beyond those authorized in section 622 and (b) additional franchises or regulatory restrictions on a cable operator's construction, management, or operation of a cable system in the rights-of-way.

89. *Additional fees.* Both Congress and the Commission have recognized that the franchise fee is the core consideration that franchising authorities receive in exchange for the

[93] For purposes of this provision, the term ''State'' has the meaning given such term in section 3 of the Act. Section 3, in turn, provides that ''the term 'State' includes the District of Columbia and the Territories and possessions.''

[94] Section 636(c)'s reference to ''this chapter'' is to the Communications Act of 1934, as amended, which is codified in Chapter 5 of Title 47 of the United States Code. Section 636(c)'s reference to ''this chapter'' stands in contrast to other provisions in section 636, which reference ''this subchapter,'' or Title VI of the Act.

[95] Contrary to some LFAs' assertion, given that Congress in section 636(c) expressly preempted certain state and local laws, we need not find that federal preemption of laws governing intrastate telecommunications services is permissible under the ''impossibility exception.'' Nevertheless, we find that the impossibility doctrine further supports our decision herein.

[96] Contrary to the suggestion of the City of Eugene, our preemption authority does not depend on section 706 of the Act.

[97] We therefore reject LFA assertions that the absence in section 621(a)(2) of an express grant of authority to ''operate'' a cable system evinces Congress's intent that a Title VI franchise bestow only the right to construct, but not to operate, a cable system over public rights-of-way.

[98] As noted, under section 621(a)(2), ''[a]ny franchise shall be construed to authorize the construction of a cable system over public rights-of-way.'' Because the ''construction of a cable system'' includes the installation of facilities and equipment needed to provide both cable and non-cable services, such as wireless broadband and Wi-Fi services, the grant of a Title VI franchise bestows the right to place facilities and equipment in rights-of-way to provide such services.

cable operator's right to access and use the rights-of-way. As explained in detail above, Congress carefully circumscribed how this fee should be calculated: It provided that ''the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services''. We must assume that Congress's careful choice of words was intentional. While the fee would apply to the ''cable operator'' with respect to any ''cable system,'' it would only apply to revenue obtained from ''cable services,'' not non-cable services that Congress understood could provide additional sources of revenue.

90. We find additional support for this conclusion in Congress's broad definition of the term ''franchise fee,'' which covers ''any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber or both, solely because of their status as such.'' This broad definition was intended to limit the imposition of any tax, fee, or assessment of any kind—including fees purportedly for provision of non-cable services or for, access to, use of, or the value of the rights of way—to five percent of the cable operator's revenue from cable services.[99] And its language reinforces the text of section 636(c) by making clear that a different state or local ''governmental entity'' cannot end-run the cap by imposing fees for access to any public right of way within the franchise area or in instances of overlapping jurisdiction.

91. In reaching this conclusion, we read the phrase ''solely because of their status as such'' as protective language intended to place a ceiling on any sort of fee that a franchising authority might impose on a cable operator qua cable operator or qua franchisee—that is, any fee assessed in exchange for the right to construct, manage, or operate a cable system in the rights-of-way. We therefore reject the claim of some commenters that this language permits localities to charge additional fees so long as the cable operator also acts as a telecommunications provider or internet service provider, or so long as the state or locality can articulate some non-cable related rationale for its actions. This alternate rationale flies in the face of statutory text. As noted above, a ''cable operator'' is defined not only as a person or entity that provides cable service, but also one that ''controls or is responsible for, through any arrangement, the management and operation of such a cable system.'' The management or operation of a cable system includes the maintenance of the system to provide non-cable services—which Congress understood would be supplied over the same cable facilities.[100] Because a fee that a state or locality imposes on a cable operator's provision of non-cable services relates to the ''manage[ment] and operat[ion]'' of its cable system, such fee is imposed on the cable operator ''solely because of [its] status'' as a cable operator and is capped by section 622.

92. The structure of section 622 as a whole provides further support for our reading. The language ''solely because of their status as such'' operates to distinguish fees imposed on cable operators for access to the rights-of-way (''franchise fees''), which are capped, from ''any tax, fee, or assessment of general applicability,'' which are not. Section 622 thus envisions two mutually exclusive categories of assessments—(1) fees imposed on cable operators for access to the rights-of-way in their capacity as franchisees (that is, ''solely because of their status as such'') and (2) broad-based taxes. Understood in this manner, any assessment on a cable operator for constructing, managing, or operating its cable system in the rights-of-way is subject to the five-percent cap—even if other non-cable service providers (*e.g.,* telecommunications or broadband providers) are subject to the same or similar access fees.[101] This is because the definition of ''franchise fee'' in section 622(g)(1) centers on why the fee is imposed on a cable operator, *i.e.,* ''solely because of [its] status'' as a franchisee, and not to whom the fee is imposed, *i.e.,* ''solely applicable'' to a cable operator. The entire category of ''franchise fees'' is subject to the five-percent cap, in distinction to generally-applicable taxes whose validity must be shown, at least in part, by their application to broader classes of entities or citizens beyond providers of cable and non-cable communications services.[102]

93. The legislative history and purposes of the 1984 Cable Act support this broad and exclusive interpretation of the term ''franchise fees.'' It reveals, for example, that Congress initially established the section 622(b) cap on franchise fees out of concern that local authorities could use such fees as a revenue-raising mechanism. A reading of section 622 that would permit states and localities to circumvent the five percent cap by imposing unbounded fees on ''non-cable services'' would frustrate the Congressional purpose behind the cap and effectively render it meaningless. The legislative history behind the 1996 amendments to section 622(b) make this intent explicit. Prior to 1996, section 622 provided, in relevant part, that ''the franchise fees paid by a cable operator with respect to any cable system shall not exceed [five percent] of such cable operator's gross revenues derived . . . from the operation of the cable system.'' The House Report accompanying the 1996 amendment,[103] which explained the addition of the key limitation ''for the provision of cable services'' in section 622(b), provides that:

> Franchising authorities may collect franchise fees under [section 622 of the Act] solely on the basis of the revenues derived by an operator from the provision of cable service. . . . This section does not restrict the right of franchising authorities to collect franchise fees on revenues from cable services and cable-related services, such as, but not limited to, revenue from the installation of cable service, equipment used to receive cable service, advertising over

[99] State and local advocates do not appear to dispute that section 622(b) limits franchise fees to five percent of a cable operator's gross revenues derived from the provision of cable service only. Rather, their claims, as discussed herein, are that fees on broadband and telecommunications services are not ''franchise fees'' at all—claims that we show are belied by the text, structure, and purposes of Title VI.

[100] As NCTA notes, a service provider may have status as a cable operator either because of its provision of cable service or because of its operation of a cable system. A service provider that is operating a cable system to provide broadband internet access service thus is providing such service ''solely because of'' its status as a cable operator.

[101] Although a ''franchise fee'' does not include ''any tax, fee, or assessment of general applicability,'' we note that this exception excludes a tax, fee, or assessment ''which is unduly discriminatory against cable operators or cable subscribers.'' Even if ''telecommunications'' fees such as those at issue in *Eugene* could reasonably be characterized as fees of general applicability by virtue of their application to providers other than cable operators, we find that such fees would be ''unduly discriminatory''—and thus constitute ''franchise fees''—as applied to franchised cable operators. This is because such fees are assessed on cable operators in addition to the five percent franchise fees such operators must pay for use of public rights-of-way. That is, cable operators must pay twice for access to rights-of-way (*i.e.*, one fee for cable service and a second fee for non-cable service), whereas non-cable providers must pay only once for such access (*i.e.*, for non-cable service). We, therefore, conclude that interpreting the Act to preclude localities from assessing fees on cable operators' use of rights-of-way to provide non-cable services would be ''competitively neutral and nondiscriminatory,'' contrary to the suggestion of some commenters.

[102] We thus disagree with assertions that Congress did not intend for franchise fees to cover cable operators' use of public property for the provision of services other than cable services.

[103] The conference agreement adopted the House version of this provision.

video channels, compensation received from video programmers, and other sources related to the provision of cable service over the cable system.

94. If, as CAPA asserts, Congress had intended the term ''cable operator'' as used in section 622(b) to refer to an entity only to the extent such entity provides cable service, there would have been no need for Congress to amend section 622(b) in this manner.

95. Although, as LFA advocates note, section 621(d)(2) of the Act provides that ''[n]othing in [Title VI] shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis,'' this provision is not an affirmative grant to states of authority to regulate non-cable services that they historically have not been empowered to regulate. First, the term ''State'' in section 621(d) does not extend to LFAs; it is defined by reference to section 3 of the Communications Act. The legislative history makes clear that this was a reference to the division of regulatory authority between the ''state public utility commission and . . . the FCC.'' Second, this provision merely reflects Congress's intent in the 1984 Cable Act to preserve the status quo with respect to federal and state jurisdiction over non-cable services. As noted, under the then-existing status quo, the Commission had jurisdiction to regulate interstate services; states had jurisdiction to regulate intrastate services. Because the Commission historically has concluded that information service is jurisdictionally interstate, it traditionally has fallen outside the proper regulatory sphere of state and local authorities.[104] Moreover, the Commission has long recognized the impossibility of separately regulating interstate and intrastate information services. Thus, neither a state nor its political subdivisions may lawfully regulate such service under section 621(d)(2) by requiring a cable operator with a Title VI franchise to pay a fee or secure a franchise or other authorization to provide broadband internet access service over its cable system. To conclude otherwise would contravene Congress's intent in Title VI to maintain the jurisdictional status quo with respect to federal, state, and local regulation of non-cable services.[105]

96. We find unpersuasive NATOA et al.'s selective reading of the legislative history to conclude that Congress intended to permit states and localities to require franchised cable operators to pay additional rights-of-way fees for the provision of non-cable services. NATOA et al. note that the House Conference Report accompanying the 1996 amendment stated that ''to the extent permissible under state and local law, communications services, including those provided by a cable company, shall be subject to the authority of a local government to, in a nondiscriminatory and competitively neutral way, manage its public rights-of-way and charge fair and reasonable fees.'' Although the cited legislative history is relevant to our interpretation of the statute,[106] we do not read this language so broadly as permitting states and localities to charge redundant or duplicative fees on cable franchisees that are subject to the five-percent cap—a reading that would, as we have explained, eviscerate the cap entirely. Rather, we conclude that, under section 636(c), and taking into account the provisions of Title VI as a whole, any fees that exceed the five-percent cap, as formulated in section 622, are not ''fair and reasonable.''[107]

97. Consistent with Congress's intent, as early as 2002, the Commission has construed section 622(b) to permit franchising authorities to include in the revenue base for franchise fee calculations only those revenues derived from the provision of cable service.[108] Thus, if a cable operator generates additional revenue by providing non-cable services over its cable system, such additional revenue may not be included in the gross revenues for purposes of calculating the cable franchise fee.[109]

98. As courts have recognized, the Commission is charged with ''the ultimate responsibility for ensuring a 'national policy' with respect to franchise fees.'' We exercise that authority in this document by making clear that states, localities, and cable franchising authorities are preempted from charging franchised cable operators more than five percent of their gross revenue from cable services. This cap applies to any attempt to impose a ''tax, fee, or assessment of any kind'' that is not subject to one of the enumerated exemptions in section 622(g)(2) on a cable operator's non-cable

[104] For example, the Commission previously has stated that it has independent authority to displace state and local regulations in accordance with the longstanding federal policy of nonregulation for information services. For more than a decade prior to the 1996 Act, the Commission consistently preempted state regulation of information services (which were then known as ''enhanced services''). When Congress adopted the Commission's regulatory framework and its deregulatory approach to information services in the 1996 Act, it thus embraced its longstanding policy of preempting state laws that interfere with our federal policy of nonregulation. Because broadband internet access service is jurisdictionally interstate whether classified as a telecommunications or an information service, regulatory authority over such service resides exclusively with the Commission.

[105] We also reject claims that section 621(d)(1)'s grant to states of authority to require the filing of tariffs by cable operators for the provision of certain non-cable services reflects Congress's intent to permit state regulation of those services. As explained above, that provision was intended only to permit states to require tariffs for services that they otherwise were authorized to regulate, such as telecommunications services that are purely intrastate.

[106] As some LFA advocates note, the Commission previously noted in passing that, while a cable operator is not required to pay cable franchise fees on revenues from non-cable services, this rule ''does not apply to non-cable franchise fee requirements, such as any lawful fees related to the provision of telecommunications service.'' For the reasons explained below, we would deem an LFA's assessment of a cable operator twice for accessing public rights-of-way (once as a cable operator and again as a telecommunications provider) to be unlawful as not ''fair and reasonable'' nor ''competitively neutral and nondiscriminatory.'' To the extent our earlier statement may suggest any broader application, we disavow it based on the record before us and the arguments made throughout this item.

[107] We disagree with LFA assertions that this interpretation is inconsistent with section 253 of the Act and the Commission's 2018 Wireless Infrastructure Order. Although section 253 permits states and localities to require ''fair and reasonable'' compensation from telecommunications providers on a ''competitively neutral and nondiscriminatory basis'' for use of public rights-of-way, as explained above, we find that imposing fees on cable operators beyond what Title VI allows is neither ''fair and reasonable'' nor ''competitively neutral and nondiscriminatory.'' Moreover, although the Commission in the Wireless Infrastructure Order concluded, among other things, that fees to use the rights-of-way to deploy small cells for the provision of telecommunications must be cost-based and no greater than those charged to ''similarly situated'' entities for comparable uses of the rights-of-way, we do not believe that our approach in this document introduces any inconsistency. Rather, as NCTA notes, we merely recognize that under the Act, cable operators must compensate local governments for accessing public rights-of-way under a statutory framework different from that applicable to telecommunications providers, and that Congress did not intend for them to be assessed twice for the provision of cable service or the facilities used in the provision of such service. Any difference in approach, therefore, follows from different standards established by Congress in sections II and VI of the Act.

[108] In the Cable Modem Declaratory Ruling, for example, the Commission stated that under section 622(b) the franchise fees paid by a cable operator with respect to any cable system may not exceed five percent of the cable operator's gross revenues derived from the operation of the cable system to provide cable services. Because cable modem service was then deemed to be an information service, the Commission concluded that revenue from cable modem service would not be included in the calculation of gross revenues from which the franchise fee ceiling is determined.

[109] In the First Report and Order, the Commission affirmed its prior interpretation of section 622(b) by clarifying that a cable operator is not required to pay franchise fees on revenues from non-cable services. Thus, internet access services, including broadband data services, and any other non-cable services are not subject to 'cable services' fees.

services or its ability to construct, manage, or operate its cable system in the rights-of-way.

99. *Additional Franchises or Other Requirements.* Congress also made clear that states, localities, and franchising authorities lack authority to require additional franchises or place additional nonmonetary conditions on a cable operator's provision of non-cable services that are not expressly authorized in the Act. Several provisions state explicitly that franchising authorities may not regulate franchised ''cable systems'' to the extent that they provide telecommunications services. In addition, as we noted above, section 624(b)(1) precludes franchising authorities from ''establish[ing] requirements for video programming or other information services.'' In the mixed-use rule we adopt in this document, we reasonably construed this provision to prohibit LFAs from regulating information services provided over cable systems.

100. As noted above, section 636(c) operates to preempt state and local requirements that would use non-Title VI authority to accomplish indirectly what franchising authorities are prohibited from doing directly. Consistent with this reasoning, we conclude that any state or local law or legal requirement that obligates a cable operator franchised under Title VI to obtain a separate, additional franchise (or other authorization) or imposes requirements beyond those permitted by Title VI to provide cable or non-cable services, including telecommunications and information services, over its cable system conflicts with the Act and thus also is expressly preempted by section 636(c). The mixed-use rule we adopt in this document represents a reasonable interpretation of the relevant provisions of Title VI as well as a balanced accommodation of the various policy interests that Congress entrusted to the Commission; therefore, it too has preemptive effect under section 636(c).[110]

101. *Public Policy.* Apart from our analysis of the text and structure of the Act and our longstanding delegated authority to preempt state regulations that are inconsistent with the Act, our preemption decisions in this document are also consistent with Congress's and the Commission's public policy goals and an appropriate response to problems that are apparent in the record.

102. Recognizing that excessive regulation at the local level could limit the potential of cable systems to deliver a broad array of services, Congress expressed its intent to ''minimize unnecessary regulation that would impose an undue economic burden on cable systems'' and ''assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public.'' More generally, section 230(b) of the Act expresses Congress's intent ''to preserve the vibrant and competitive free market that presently exists for the internet and other interactive computer services, unfettered by Federal or State regulation.''[111] Accordingly, the Commission has previously preempted state and local regulations that would conflict with this federal policy of nonregulation of information services. These longstanding federal policies provide further support for our decision in this document to read Title VI as prohibiting states, localities, and franchising authorities from imposing fees and obligations on cable operators beyond those expressly set forth in that Title.

103. Our preemption decision in this document will advance these federal policies by preventing further abuses of state and local authorities of the kind manifested in the record in this proceeding. In recent years, governmental entities at the local level increasingly have sought to regulate non-cable services provided over mixed-use cable systems franchised under Title VI, particularly broadband internet access service. Such governmental entities have included not only state and local franchising authorities acting pursuant to the cable franchising provisions of Title VI, but also state and local entities purportedly acting pursuant to their police powers to regulate public rights-of-way or other powers derived from sources outside Title VI. Although the record reveals that such regulation takes many different forms, NCTA and other industry advocates have expressed acute concerns about two particular kinds of state and local regulation: (1) Requirements obligating cable operators with a Title VI franchise that are subject to the franchise fee requirement in section 622(b) of the Act to pay additional fees for the provision of non-cable services (such as broadband internet access) via their cable systems; and (2) requirements obligating cable operators with a Title VI franchise to secure an additional franchise (or other authorization) to provide non-cable services over their cable systems. Our preemption decisions in this document are carefully tailored to address these problems and prevent states and localities from continuing to circumvent the carefully calibrated terms of Title VI through these and similar kinds of regulations.

104. We disagree with those commenters who attempt to minimize the harm posed by the state and local requirements that we preempt in this document. We disagree, for example, that cable industry claims regarding the impact of duplicative fee and franchise requirements on broadband deployment are belied by the industry's substantial investments to date in broadband infrastructure, and that such requirements thus will not adversely affect broadband investment going forward. As the record reflects, even if cable operators were to continue to invest, such investments likely would be higher absent such requirements, and even small decreases in investment can have a substantial adverse impact on consumer welfare. We also are persuaded that the imposition of duplicative requirements may deter investment in new infrastructure and services irrespective of whether or to what extent a cable operator passes on those costs to consumers. Contrary to the assertions of some commenters, we also believe that such requirements impede Congress's goal to accelerate deployment of ''advanced telecommunications capability to all Americans.''

[110] We reject arguments that the Commission lacks authority to preempt state and local regulation of information services without asserting ancillary jurisdiction over information services. Because we are relying on express preemption authority under section 636(c), there is no reason for us to rely upon ancillary authority in this proceeding.

[111] ''Interactive computer services'' are defined, in relevant part, as ''any information service, system, or access software provider that provides or enables computer access by multiple users to a computer service, including specifically a service or system that provides access to the Internet. . . .''

105. *Other Legal Considerations.* In reaching our decision in this document, we agree with the majority of courts that have found that a Title VI franchise authorizes a cable operator to provide non-cable services without additional franchises or fee payments to state or local authorities. In so doing, we repudiate the reasoning in a 2016 decision by the Supreme Court of Oregon in *City of Eugene* v. *Comcast,*[112]which appears to have prompted an increasing number of states and municipalities to impose fees on franchised cable operators' provision of non-cable services.[113] In *Eugene,* the court upheld the city's imposition of a separate, additional ''telecommunications'' license fee on the provision of broadband services over a franchised cable system, reasoning that the fee was not imposed pursuant to the city's Title VI cable franchising authority, but rather, under the city's authority as a local government to impose fees for access to rights-of-way for the provision of telecommunications services. For the reasons stated above, we conclude that *Eugene* fundamentally misreads the text, structure, and legislative history of the Act, and clarify that any state or local regulation that imposes on a cable operator fees for the provision of non-cable services over a cable system franchised under Title VI conflicts with section 622(b) of the Act and is preempted under section 636(c).[114]

106. As noted above, although sections 602(7)(C) and 624(b)(1) by their terms circumscribe franchising authority regulation of non-cable services pursuant to Title VI, section 636(c) makes clear that state and local authorities may not end-run the provisions of Title VI simply by asserting some other source of authority—such as their police powers to regulate access to public rights-of-way—to accomplish what Title VI prohibits. To be sure, section 636(a) provides that ''[n]othing in [Title VI] shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of [Title VI].'' While we recognize that states and municipalities possess authority to manage rights-of-way that is distinct from their cable franchising authority under Title VI, states and localities may not exercise that authority in a manner that conflicts with federal law. As the U.S. Supreme Court has found, ''[w]hen federal officials determine, as the FCC has here, that restrictive regulation of a particular area is not in the public interest, [s]tates are not permitted to use their police power to enact such . . . regulation.''

107. Our decision in this document still leaves meaningful room for states to exercise their traditional police powers under section 636(a).[115] While we do not have occasion in this document to delineate all the categories of state and local rules saved by that provision, we note that states and localities under section 636(a) may lawfully engage in rights-of-way management (*e.g.,* road closures necessitated by cable plant installation, enforcement of building and electrical codes) so long as such regulation otherwise is consistent with Title VI. Similarly, we do not preempt state regulation of telecommunications services that are purely intrastate, such as requirements that a cable operator obtain a certificate of public convenience and necessity to provide such services. State regulation of intrastate telecommunications services is permissible so long as it is consistent with the Act and the Commission's implementing rules and policies.[116] We also do not disturb or displace the traditional role of states in generally policing such matters as fraud, taxation, and general commercial dealings, so long as the administration of such laws does not interfere with federal regulatory objectives.

108. We also find unconvincing Anne Arundel County et al.'s argument that the Commission's preemption of state and local management of public rights-of-way violates the Tenth Amendment to the U.S. Constitution by ''direct[ing] local governments to surrender their property and management rights to generate additional funds for use in the expanded deployment of broadband.'' In particular, Anne Arundel County et al. contends that by preventing states and localities from overseeing use of their rights-of-way, the Commission effectively is commanding them to grant rights-of-way access on terms established by the Commission, rather than state or local governments. That argument fails for multiple reasons.

109. The Tenth Amendment provides that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'' We find that Anne Arundel County et al. has failed to demonstrate any violation of the Tenth Amendment. As the Supreme Court has stated, ''[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States.'' Therefore, when Congress acts within the scope of its authority under the Commerce Clause, no Tenth Amendment issue arises. Regulation of interstate telecommunications and information services, and cable services, is within Congress' authority under the Commerce Clause. Thus, because our authority derives from a proper exercise of Congressional power, the Tenth Amendment poses no obstacle to our preemption of state and local laws and other legal requirements.

110. We also find no merit to arguments that the Commission's preemption of certain state and local requirements constitutes an improper ''commandeering'' of state governmental power. The Supreme Court has recognized that ''where Congress has the authority to regulate private activity under the Commerce Clause,'' Congress has the ''power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation.'' Title VI provides that a franchising authority ''may award'' franchises ''in accordance with this title.'' It thus simply establishes limitations on the scope of that authority when and if exercised. Here, we are simply requiring that,

[112] The regulations at issue in *Eugene* included that: (i) Comcast's franchise agreement for the provision of cable services over the city's public rights-of-way did not give it the right to provide cable modem service over those rights-of-way; (ii) the Communications Act did not give Comcast an independent right to provide cable modem service over the city's public rights-of-way; (iii) the Act did not preclude the city from assessing fees on revenues derived from Comcast's provision of cable modem service over public rights-of-way; and (iv) such fees did not constitute franchise fees under section 622(b) of the Act.

[113] NCTA asserts that in the wake of *Eugene,* a multitude of cities in Oregon have adopted or reinterpreted ordinances to impose fees on gross revenues derived from the provision of broadband services, in addition to those already imposed under cable franchises. NCTA notes that multiple communities in Ohio also have passed ordinances requiring that cable operators secure a ''Certificate of Registration'' in addition to a state-issued cable franchise before offering non-cable services, and that such certificates require payment of additional fees as a condition of occupying rights-of-way. NCTA asserts further that such duplicative fees are imposed not only at the local level, but also at the state level.

[114] Such regulation includes not only requirements imposed by a state or locality acting pursuant to the cable franchising provisions of Title VI, but also requirements imposed by a state or locality purportedly acting pursuant to any powers granted outside Title VI.

[115] Given the robust scope that we retain in this Order for the operation of section 636(a), we reject the City of Eugene's assertion that we have not engaged in ''meaningful discussion'' of this provision.

[116] We note, for example, that section 253(a) of the Act prohibits state or local statutes, regulations, or other legal requirements that prohibit or have the effect of prohibiting the ability of any entity to provide ''any interstate or intrastate telecommunications service.''

should state and local governments decide to open their rights-of-way to providers of interstate communication services within the Commission's jurisdiction, they do so in accordance with federal standards. As noted, Congress in section 636(c) expressly authorized Commission preemption of state and local laws and other legal requirements that conflict with federal standards. Because the Commission has the constitutional authority to adopt such standards, and because those standards do not require that state or local governments take or decline to take any particular action, we conclude that our preemption decisions in this Order do not violate the Tenth Amendment.[117]

111. As proposed in the Second FNPRM, we find that the conclusions set forth in this Order, as well as the Commission's decisions in the First Report and Order[118] and Second Report and Order,[119] as clarified in the Order on Reconsideration, apply to franchising actions taken at the state level and state regulations that impose requirements on local franchising. In the First Report and Order, the Commission declined to ''address the reasonableness of demands made by state level franchising authorities'' or to extend the ''findings and regulations'' adopted in its section 621 orders to actions taken at the state level. It noted that many state franchising laws had only been in effect for a short time and that the Commission lacked a sufficient record regarding their effect. In the Order on Reconsideration, the Commission indicated that if any interested parties believed the Commission should revisit the issue in the future, they could present the Commission with evidence that the findings in the First Report and Order and Second Report and Order ''are of practical relevance to the franchising process at the state-level and therefore should be applied or extended accordingly.''

112. In the Second FNPRM, we again asked whether the Commission should apply the decisions in this proceeding to franchising actions and regulations taken at the state level. As we noted, more than ten years have passed since the Commission first considered whether to apply its decisions interpreting section 621 to state-level franchising actions and state regulations. The decade of experience with the state-franchising process, along with comments responding to the questions related to this issue raised in the Second FNPRM, provide us with an adequate record regarding the effect of state involvement in the franchising process.

113. We now find that the better reading of the Cable Act's text and purpose is that that the rules and decisions adopted in this Order, as well as those adopted in the First Report and Order and Second Report and Order, should fully apply to state-level franchising actions and regulations. First, we see no statutory basis for distinguishing between state- and local-level franchising actions. Nor do we think such a distinction would further Congress's goals: Unreasonable demands by state-level franchising authorities can impede competition and investment just as unreasonable demands by local authorities can. While we need not opine on the reasonableness of specific state actions raised by commenters, we find that there is evidence in the record that state franchising actions—alone or cumulatively with local franchising actions—in some cases impose burdens beyond what the Cable Act allows. We see no reason—statutory or otherwise—why the Cable Act would prohibit these actions at the local level but permit them at the state level.

114. The Cable Act does not distinguish between state and local franchising authorities. Section 621(a) and the other cable franchising provisions of Title VI circumscribe the power of ''franchising authorities'' to regulate services provided over cable systems. The Cable Act defines ''franchising authority'' as ''any governmental entity empowered by Federal, State or local law to grant a franchise.'' In other words, the provisions of Title VI that apply to ''franchising authorities'' apply equally to any entity ''empowered by . . . law''—including state law—''to grant a franchise.'' Many states have left franchising to local authorities, making those authorities subject to the limits imposed under Title VI. Twenty-three states, however, have empowered a state-level entity, such as a state public utility commission, to grant cable franchise authorizations, rendering them ''franchising authorities'' under Title VI. Bolstering the conclusion that Congress intended the Cable Act to govern state-level action is section 636 of the Cable Act, which expressly preempts ''any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority'' that conflicts with the Cable Act.[120] Limiting the Commission's rulings to local-level action would call for some plausible interpretation of these provisions; those opposing the extension of the Commission's rulings to state franchising authorities offer none. Accordingly, we find that the Cable Act does not distinguish between state- and local-level franchising actions, and that the Commission's rulings should therefore apply equally to both.

115. In addition, we find unavailing claims in the record that the Commission should limit its decisions to local authorities for policy reasons. To the contrary, we find that extending

[117] We also conclude that our actions do not violate the Fifth Amendment to the U.S. Constitution. The ''takings'' clause of the Fifth Amendment provides: ''[N]or shall private property be taken for public use, without just compensation.'' First, our actions herein do not result in a Fifth Amendment taking. Courts have held that municipalities generally do not have a compensable ''ownership'' interest in public rights-of-way, but rather hold the public streets and sidewalks in trust for the public. Moreover, even if there was a taking, Congress provided for ''just compensation'' through cable franchise fees. Section 622(h)(2) of the Act provides that a franchising authority may recover a franchise fee of up to five percent of a cable operator's annual gross revenues derived from the provision of cable service. Congress intended that the cable franchise fee serve as the consideration given in exchange for a cable operator's right to use public rights-of-way. Our actions herein do not eviscerate the ability of local authorities to impose such franchise fees. Rather, our actions simply ensure that local authorities do not impose duplicative fees for the same use of rights-of-way by mixed use facilities of cable operators, contrary to express statutory provisions and policy goals set forth in the Act.

[118] In the First Report and Order, the Commission adopted time limits for LFAs to render a final decision on a new entrant's franchise application and established a remedy for applicants that do not receive a decision within the applicable time frame; concluded that it was unlawful for LFAs to refuse to grant a franchise to a new entrant on the basis of unreasonable build-out mandates; clarified which revenue-generating services should be included in a new entrant's franchise fee revenue base and which franchise-related costs should and should not be included within the statutory five percent franchise fee cap; concluded that LFAs may not make unreasonable demands of new entrants relating to PEG channels and I-Nets; adopted the mixed-use network ruling for new entrants; and preempted local franchising laws, regulations, and agreements to the extent they conflict with the rules adopted in that order.

[119] In the Second Report and Order, the Commission extended to incumbent cable operators the rulings in the First Report and Order relating to franchise fees and mixed-use networks and the PEG and I-Net rulings that were deemed applicable to incumbent cable operators, *i.e.,* the findings that the non-capital costs of PEG requirements must be offset from the cable operator's franchise fee payments, that it is not necessary to adopt standard terms for PEG channels, and that it is not per se unreasonable for LFAs to require the payment of ongoing costs to support PEG, so long as such support costs as applicable are subject to the franchise fee cap.

[120] As we explain above, this preemption does not extend to state regulation of intrastate telecommunications services or regulation related to matters of public health, safety, and welfare that otherwise is consistent with the Act, and nothing in this Order is intended to disturb the traditional role that states have played in these regards.

the Commission's rulings to state level franchising actions and regulations furthers the goals of the Cable Act. Unreasonable barriers to entry imposed by any franchising authority—state or local—frustrate the goals of competition and deployment. In the First Report and Order, we found that removing regulatory obstacles posed by local franchising authorities would further these goals. We now find that this policy rationale applies with equal force to franchising actions taken at the state level.

116. We disagree that extending the Commission's rulings to state-level franchising and regulation, however, will eliminate the benefits of state-level action. We are not persuaded that extending the Commission's rulings to state-level actions would prevent—or even discourage—state-level franchising and regulation. Indeed, applying the Commission's rulings to state-level action will merely ensure that the same rules that apply to LFAs also apply at the state level.[121] This consistency is itself beneficial, ensuring that various statutory provisions—such as sections 621 and 622—are interpreted uniformly throughout the country. As one commenter notes, ''state-level cable regulations may be modeled on the federal act, and so, allowing disparate interpretations of the same language could lead to confusion among consumers, regulators, and franchisees.''

117. Nor should applying our interpretations of the Cable Act to state-level actions interfere with states' authority to enact general taxes and regulations. Some commenters express concern that the Commission's rulings would disturb state franchising laws that apply more broadly than the Cable Act.[122] While we decline here to opine on the application of the Cable Act to specific state laws, we note that these concerns are largely settled by section 622, which excludes ''any tax, fee, or assessment of general applicability'' from the definition of franchise fees. Other provisions of the Act similarly make clear that the Act does not affect state authority regarding matters of public health, safety, and welfare, to the extent that states exercise that authority consistent with the express provisions of the Cable Act.

118. Finally, some commenters assert that extending the Commission's rulings to state-level actions would ''upend carefully balanced policy decisions by the states.'' [123] According to commenters, local governments might wish to refuse these benefits if they come at the expense of franchise fees—but they will be unable to do so where they are mandated by state law.[124]

119. We are not convinced that these concerns justify limiting the Commission's rulings to local-level actions. Again, our conclusion in this section will disturb existing state laws only to the extent that they conflict with the Cable Act and the Commission's rulings implementing the Act. While this may upset some preexisting legislative compromises, it will also root out state laws that impose demands and conditions that Congress and the Commission have found to be unreasonable. Further, ensuring that the Cable Act is applied uniformly between state and local franchising authorities is necessary to further the goals of the Act, and more importantly, is consistent with the language of the Act. As some commenters have noted, if the Commission does not apply these requirements to state franchises, states could pass laws circumventing the Cable Act's limitations on LFAs. That result would thwart Congress's intent in imposing those limitations. For these reasons, we conclude that the benefits of extending the Commission's rulings and interpretations to state-level actions outweigh any burdens caused by upsetting existing state-level policy decisions.

120. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comment on the proposals in the Second FNPRM, including comment on the IRFA. The Commission received one comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

121. In the Report and Order, we interpret sections of the Communications Act of 1934, as amended that govern how local franchising authorities may regulate cable operators and cable television services, with specific focus on issues remanded from the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) in *Montgomery County, Md. et al.* v. *FCC* (*Montgomery County*). The Order seeks to explain and establish the statutory basis for the Commission's interpretation of the Act in order to better fulfill the Commission's goals of eliminating regulatory obstacles in the marketplace for cable services and encouraging broadband investment and deployment by cable operators.

122. In the Order, we first conclude that cable-related, ''in-kind'' contributions required by a cable franchise agreement are franchise fees subject to the statutory five percent cap on franchise fees set forth in section 622 of the Act. We base this conclusion on the broad definition of franchise fee in section 622, which is not limited to monetary contributions. We interpret the Act's limited exceptions to the definition of franchise fee, including an exemption for capital costs related to public, educational, and governmental access (PEG) channels, such as equipment costs or those associated with building a facility. We also reaffirm that this rule applies to both new entrants and incumbent cable operators. Second, we conclude that under the Act, LFAs may not regulate the provision of most non-cable services, including broadband internet access service, offered over a cable system by an incumbent cable operator that is not a common carrier. Finally, we conclude that Commission guidance concerning LFAs' regulation of cable operators should apply to state-level franchising actions and regulations that impose requirements on local franchising.

123. The Order is authorized pursuant to sections 1, 4(i), 201(b), 230, 303, 602, 621, 622, 624, and 636 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201, 230, 303, 522, 541, 542, 544, and 556.

[121] For these reasons, we disagree with commenters who argue that applying the Commission's rules at the state level is contrary to the Cable Act's purpose of ''assur[ing] that cable systems are responsive to the needs and interests of the local community.'' The City of Philadelphia, for example, argues that extending the Commission's rules to state-level actions would ''unduly restrict state and local governments from addressing local and hyperlocal cable-related issues.'' For the reasons discussed above, we are not convinced that applying our rules to state franchising authorities will impede the ability of state and local authorities to address local issues. Rather, by doing so, we ensure that the goals of the Cable Act, as determined by Congress, including ''encourag[ing] the growth and development of cable systems,'' are fully realized.

[122] For example, California's Digital Infrastructure and Video Competition Act (DIVCA) assesses an annual administrative fee and authorizes LFAs to assess on both cable operators and non-cable video franchise holders, up to a one-percent fee on gross revenues for PEG, in addition to a state franchise fee of five percent of gross revenues. The Eastern District of California found that DIVCA was a law of ''general applicability'' for the purposes of section 622 in *Comcast of Sacramento.*

[123] In Illinois, for example, state law requires that cable operators provide ''line drops and free basic service to public buildings.'' The Illinois statute defines a ''service line drop'' as ''the point of connection between a premises and the cable or video network that enables the premises to receive cable service or video service.''

[124] Similarly, one commenter claims that DIVCA reflected a legislative compromise between cable operators and franchising authorities that would be upset if the Commission's rules were extended to state level actions.

The types of small entities that may be affected by the Order fall within the following categories: small businesses, small organizations, small governmental jurisdictions; wired telecommunications carriers; cable companies and systems; cable system operators; and open video services.

124. Only one commenter, the City of Newton Massachusetts, submitted a comment that specifically responded to the IRFA.[125] The City of Newton suggests that a transition period of at least six years is needed to satisfy the Commission's Regulatory Flexibility Act obligation to minimize significant financial impacts on small communities and non-profit organizations. The City of Newton argues that this transition period is needed to allow time for affected parties to: (1) Identify cable-related in kind contributions which count against the franchise fee cap; (2) reach agreement on the valuation of cable-related in-kind contributions; (3) resolve any disputes with respect to those issues; and (4) adjust their contractual commitments in light of any prospective reduction in franchise fee revenues (and the timing of those reductions).

125. The rules adopted in the Order will impose no additional reporting or recordkeeping requirements. We expect the compliance requirements—namely, modifying and renewing cable franchise agreements to comport with the law—will have only a de minimis effect on small entities. As ACA explains, ''most franchising authorities understand the limits of their authority and do not impose unlawful requirements on [small cable operators].'' [126] LFAs will continue to review and make decisions on applications for cable franchises as they already do, and any modifications to the local franchising process resulting from these rules will further streamline that process. The rules will streamline the local franchising process by providing guidance as to: The appropriate treatment of cable-related, in-kind contributions demanded by LFAs for purposes of the statutory five percent franchise fee cap, what constitutes ''cable-related, in-kind contributions,'' and how such contributions are to be valued. The rules will also streamline the local franchising process by making clear that LFAs may not use their video franchising authority to regulate the provision of certain non-cable services offered over cable systems by incumbent cable operators. The same can be said of franchising at the state level. The rules will help streamline the franchising process by ensuring that applicable statutory provisions are interpreted uniformly throughout the country.

126. The RFA requires an agency to describe any significant alternatives it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' [127]

127. To the extent that these rules are matters of statutory interpretation, we find that the adopted rules are statutorily mandated and therefore no meaningful alternatives exist.[128] Moreover, as noted above, the rules are expected to have only a de minimis effect on small entities. The rules will also streamline the local franchising process by providing additional guidance to LFAs.

128. Treating cable-related, in-kind contributions as ''franchise fees'' subject to the statutory five percent franchise fee cap will benefit small cable operators by ensuring that LFAs do not circumvent the statutory five percent cap by demanding, for example, unlimited free or discounted services. This in turn will help to ensure that local franchising requirements do not deter small cable operators from investing in new services and facilities. Similarly, applying these rules at the state level helps to ensure that such deterrence does not come from state-level franchising requirements either. Finally, applying the Commission's mixed-use rule to all incumbent cable operators helps to ensure that all small cable operators may compete on a level playing field because incumbent cable operators will now be subject to the same rule that applies to competitive cable operators. We disagree with the City of Newton's argument that we should afford small entities six years to implement these changes—the issues that City of Newton raises are matters of statutory interpretation, and the Communications Act does not provide for the implementation period that the City of Newton requests.

129. This document does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, therefore, it does not contain any new or modified ''information burden for small business concerns with fewer than 25 employees'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

130. Accordingly, it is ordered that, pursuant to the authority found in sections 1, 4(i), 201(b), 230, 303, 602, 621, 622, 624, and 636 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 230, 303, 522, 541, 542, 544, and 556, this Third Report and Order is adopted. It is further ordered that the Commission's rules are hereby amended and such rule amendments shall be effective 30 days after publication in the **Federal Register**. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Third Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. It is further ordered that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission shall send a copy of the Third Report and Order to Congress and the Government Accountability Office.

List of Subjects in 47 CFR Part 76

Cable television, Communications, internet, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends part 76 of title 47 of the Code of Federal Regulations (CFR) as set forth below:

[125] Letter from Ruthanne Fuller, Mayor and Issuing Authority, and Alan D. Mandl, Assistant City Solicitor, City of Newton, Massachusetts, to Chairman Pai and Commissioners Carr, O'Rielly and Rosenworcel, FCC, MB Docket No. 05–311, at 7 (filed Nov. 14, 2018) (City of Newton Letter); City of Newton Comments at 3–4.

[126] Letter from Ross Lieberman, Senior Vice President, Government Affairs ACA Connects—America's Communications Association, to Marlene Dortch, Secretary, FCC, at 1 (July 25, 2019).

[127] 5 U.S.C. 603(c)(1) through (4).

[128] For this reason, we disagree with NATOA et al. that our actions will affect service to senior citizens, or to schools, libraries, and other public buildings and that this analysis is inadequate. See Letter from Joseph Van Eaton et al., Counsel to Anne Arundel County, et al. to Marlene H. Dortch, Secretary, FCC at 2 (July 24, 2019). This argument is essentially that the statutory cap does not afford local governments enough money to serve their constituents, and we do not have the authority to amend the statute.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 201, 230, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 541, 542, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Revise subpart C heading to read as follows:

Subpart C—Cable Franchising

■ 3. Add § 76.42 to read as follows:

§ 76.42 In-kind contributions.

(a) In-kind, cable-related contributions are ''franchise fees'' subject to the five percent cap set forth in 47 U.S.C. 542(b). Such contributions, which count toward the five percent cap at their fair market value, include any non-monetary contributions related to the provision of cable service by a cable operator as a condition or requirement of a local franchise, including but not limited to:

(1) Costs attributable to the provision of free or discounted cable service to public buildings, including buildings leased by or under control of the franchising authority;

(2) Costs in support of public, educational, or governmental access facilities, with the exception of capital costs; and

(3) Costs attributable to the construction of institutional networks.

(b) In-kind, cable-related contributions do not include the costs of complying with build-out and customer service requirements.

■ 4. Add § 76.43 to read as follows:

§ 76.43 Mixed-use rule.

A franchising authority may not regulate the provision of any services other than cable services offered over the cable system of a cable operator, with the exception of channel capacity on institutional networks.

[FR Doc. 2019–18230 Filed 8–26–19; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 507, 515, 538, and 552

[GSAR Case 2016–G506; Docket GSA–GSAR–2019–0009; Sequence 1]

RIN 3090–AJ483

General Services Administration Acquisition Regulation (GSAR); Updates to the Issuance of GSA's Acquisition Policy; Correction

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Final rule; correction.

SUMMARY: GSA is issuing a correction to GSAR Case 2016–G506; Updates to the Issuance of GSA's Acquisition Policy, which was published in the **Federal Register** on July 16, 2019. This correction amends the heading of the document.

DATES: *Effective:* August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, at 202–445–0390, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2016–G509—Updates to the Issuance of GSA's Acquisition Policy. Corrections.

SUPPLEMENTARY INFORMATION:

Correction

In rule FR Doc. 2019–15056, published in the **Federal Register** at 84 FR 33858, on July 16, 2019, on page 33858, in the third column, in the docket number in the document heading, remove ''GSAR Change 102''.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–18408 Filed 8–26–19; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AC14

Inclusion of Early Stage Technology Demonstration in Authorized Technology Transfer Activities

AGENCY: Office of Management, Department of Energy.

ACTION: Final rule; technical amendments.

SUMMARY: The Department of Energy (DOE) is publishing this final rule to amend its current acquisition regulations regarding allowability of costs associated with technology transfer activities pursuant to the Stevenson-Wydler Technology Innovation Act of 1980, as amended. The content of these technical amendments correspond with the provisions enacted by Congress through the Department of Energy Research and Innovation Act.

DATES: This rule is effective August 27, 2019.

ADDRESSES: The docket, which includes **Federal Register** notices and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index.

A link to the docket web page can be found at *https://www.regulations.gov.* The docket web page will contain simple instructions on how to assess all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Taylor, U.S. Department of Energy, Office of Management, at (202)–287–1560 or by email at *Jason.Taylor@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Section 102 of the Department of Energy Research and Innovation Act, Public Law 115–246 (Research and Innovation Act), amended section 1001 of EPACT 2005, 42 U.S.C. 16391 to require DOE to permit specified National Laboratories owned by DOE to use funds authorized to support technology transfer within DOE to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from National Laboratory activities.

The Technology Transfer Mission clause at 48 CFR 970.5227–3 (paragraph (c)(1)) currently limits the use of funds used to support Office of Research and Technology Applications (ORTAs) to three categories: (1) Obtaining, maintaining, licensing, and assigning Intellectual Property rights; (2) increasing the potential for the transfer of technology; and (3) providing widespread notice of technology

transfer opportunities. Pursuant to the Research and Innovation Act, DOE is modifying its acquisition regulation by amending the text of the Technology Transfer Mission clause to add (as a fourth category) early stage and precommercial technology demonstration activities to paragraph (c)(1), ''Allowable costs''.

II. Summary of This Action

As a result of the change imposed by the Research and Innovation Act, DOE amends § 970.5227–3(c)(1) by revising the second sentence to add ''early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from Laboratory activities.'' DOE welcomes information on the early stage and precommercial technology demonstration activities that may be enabled at the DOE National Laboratories through the use of funds available for technology transfer.

III. Final Action

DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. This rule inserts into the CFR, for the benefit of the public, the Research and Innovation Act requirement that DOE permit the directors of the National Laboratories to use funds authorized to support technology transfer within the Department to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from National Laboratory activities. DOE exercises no discretion in amending its regulations to implement this statutory requirement. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking. For the same reasons, DOE, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for making this final rule effective upon publication in the **Federal Register.**

IV. Procedural Requirements

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This final rule is a not a ''significant regulatory action'' under the criteria set out in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'').

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. This final rule is expected to be an E.O. 13771 deregulatory action.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE concludes that this final rule is consistent with the requirements set forth in these executive orders. The Research and Innovation Act amends EPACT 2005 to require DOE to permit the directors of the National Laboratories to use funds authorized to support technology transfer within the Department to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from National Laboratory activities. The current regulatory language does not permit such use of these funds. Therefore, this final rule is an Executive Order 13771 deregulatory action.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: *http://energy.gov/gc/office-general-counsel.* This rule revises the Code of Federal Regulations to incorporate, without substantive change, a statutorily-required change to permit use of funds authorized to support technology transfer to carry out early stage and precommercial technology demonstration activities to remove technology barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from National Laboratory activities. Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply to this rulemaking.

D. Review Under the Paperwork Reduction Act of 1995

This rulemaking imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

E. Review Under the National Environmental Policy Act of 1969

In this rule, DOE is incorporating requirements prescribed by the Research and Innovation Act. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has determined that this rule does not limit the policymaking discretion of the States. No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov).* This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined

as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule, which incorporates recently-enacted statutory provisions into DOE's regulations, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 48 CFR Part 970

Government procurement.

Signed in Washington, DC, July 24, 2019.

John R. Bashista,

Director, Office of Acquisition Management, Department of Energy.

S. Keith Hamilton,

Deputy Associate Administrator, Acquisition and Project Management, National Nuclear Security Administration.

For the reasons set forth in the preamble, DOE hereby amends chapter 9, subchapter I, of title 48 of the Code of Federal Regulations as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 1. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

■ 2. Section 970.5227–3 is amended by revising the clause date and the second sentence of paragraph (c)(1) to read as follows:

970.5227–3 Technology transfer mission.

* * * * *

Technology Transfer Mission (AUG 2019)

* * * * *

(c) * * *

(1) * * * The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, widespread notice of technology transfer opportunities, and early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from Laboratory activities, shall be deemed allowable provided that such costs meet the other requirements of the allowable cost provisions of this Contract.* * *

* * * * *

[FR Doc. 2019–18297 Filed 8–26–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2018–0007; 4500030113]

RIN 1018–BC97

Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or FWS), revise our regulations related to threatened species to remove the prior default extension of most of the prohibitions for activities involving endangered species to threatened species. For species already listed as a threatened species, the revised regulations do not alter the applicable prohibitions. The revised regulations provide that the Service, pursuant to section 4(d) of the Endangered Species Act (''ESA'' or the ''Act''), will determine what protective regulations are appropriate for species added to or reclassified on the lists of threatened species.

DATES: This final regulation is effective on September 26, 2019.

ADDRESSES: This final regulation is available on the internet at *http://www.regulations.gov* in Docket No. FWS–HQ–ES–2018–0007. Comments and materials received, as well as supporting documentation used in the preparation of this final regulation, are also available at the same website.

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703/358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, the Service published proposed regulation revisions in the **Federal Register** (83 FR 35174) regarding section 4(d) of the Act and its implementing regulations in title 50 of the Code of Federal Regulations at 50 CFR part 17 setting forth the prohibitions for species listed as threatened on the Federal Lists of Endangered and Threatened Wildlife and Plants (lists). In the July 25, 2018, **Federal Register** document, we provided the background for our proposed regulation revisions in terms of the statute, legislative history, and case law.

The regulations that implement the ESA are located in title 50 of the Code of Federal Regulations. This final rule revises regulations found in part 17 of title 50, particularly in subpart D, which pertains to threatened wildlife, and subpart G, which pertains to threatened plants.

In this final rule, we amend §§ 17.31 and 17.71. Among other changes, language is added in both sections to paragraph (a) to specify that its provisions apply only to species listed as threatened species on or before the effective date of this rule. Species listed or reclassified as a threatened species after the effective date of this rule would have protective regulations only if the Service promulgates a species-specific rule (also referred to as a special rule). In those cases, we intend to finalize the species-specific rule concurrent with the final listing or reclassification determination. Notwithstanding our intention, we have discretion to revise or promulgate species-specific rules at any time after the final listing or reclassification determination.

This change makes our regulatory approach for threatened species similar to the approach that the National Marine Fisheries Service (NMFS) has taken since Congress added section 4(d) to the Act, as discussed below. The protective regulations that currently apply to threatened species would not

change, unless the Service adopts a species-specific rule in the future. As of the date of this final rule, there are species-specific protective regulations for threatened wildlife in subpart D of part 17, but the Service has not adopted any species-specific protective regulations for plants. These final regulations do not affect the consultation obligations of Federal agencies pursuant to section 7 of the Act. These final regulations do not change permitting pursuant to 50 CFR 17.32.

The prohibitions set forth in ESA section 9 expressly apply only to species listed as endangered under the Act, as opposed to threatened. 16 U.S.C. 1538(a). ESA section 4(d), however, provides that the Secretaries of the Interior and Commerce may by regulation extend some or all of the section 9 prohibitions to any species listed as threatened. *Id.* section 1533(d). 16 U.S.C. 1533(d). *See, also* S. Rep. 93–307 (July 1, 1973) (in amending the ESA to include the protection of threatened species and creating ''two levels of protection'' for endangered species and threatened species, ''regulatory mechanisms may more easily be tailored to the needs of the'' species). Our existing regulations in §§ 17.31 and 17.71, extending most of the prohibitions for endangered species to threatened species unless altered by a specific regulation, is one reasonable approach to exercising the discretion granted to the Service by section 4(d) of the Act. *See Sweet Home Chapter of Communities for a Great Or.* v. *Babbitt,* 1 F.3d 1, 7 (D.C. Cir. 1993) (''regardless of the ESA's overall design, § 1533(d) arguably grants the FWS the discretion to extend the maximum protection to all threatened species at once, if guided by its expertise in the field of wildlife protection, it finds it expeditious to do so''), *altered on other grounds in rehearing,* 17 F.3d 1463 (D.C. Cir. 1994).

Another reasonable approach is the one that the Department of Commerce, through NMFS, has taken in regard to the species under its purview. NMFS did not adopt regulations that extended most of the prohibitions for endangered species to threatened species as we did. Rather, for each species that they list as threatened, NMFS promulgates the appropriate regulations to put in place prohibitions, protections, or restrictions tailored specifically to that species. In more than 40 years of implementing the Act, NMFS has successfully implemented the provisions of the Act using this approach.

Moreover, we have gained considerable experience in developing species-specific rules over the years. Where we have developed species-specific 4(d) rules, we have seen many benefits, including removing redundant permitting requirements, facilitating implementation of beneficial conservation actions, and making better use of our limited personnel and fiscal resources by focusing prohibitions on the stressors contributing to the threatened status of the species. This final rule will allow us to capitalize on these benefits in tailoring the regulations to the needs of threatened species.

For example, we finalized a species-specific 4(d) rule for the coastal California gnatcatcher (*Polioptila californica californica*) on December 10, 1993 (58 FR 65088). In that 4(d) rule, we determined that activities that met the requirements of the State of California's Natural Communities Conservation Plan for the protection of coastal sage scrub habitat would not constitute violations of section 9 of the Act. Similarly, in 2016, we finalized the listing of the Kentucky arrow darter (*Etheostoma spilotum*) with a species-specific 4(d) rule that exempts take as a result of beneficial in-stream habitat enhancement projects, bridge and culvert replacement, and maintenance of stream crossings on lands managed by the U.S. Forest Service in habitats occupied by the species (81 FR 68963, October 5, 2016). As with both of these examples, if the proposed rule is finalized, we would continue our practice of explaining in the preamble the rationale for the species-specific prohibitions included in each 4(d) rule.

These final regulations would remove the references to subpart A in §§ 17.31 and 17.71. In § 17.31, we specify which sections apply to wildlife, to be more transparent as to which provisions contain exceptions to the prohibitions. In § 17.71, we remove all reference to subpart A, because none of those exceptions apply to plants.

In finalizing the specific changes to the regulations that follow, and setting out the accompanying clarifying discussion in this preamble, the Service is establishing prospective standards only. Nothing in these final revised regulations is intended to require (now or at such time as these regulations may become final) that any previous listing or reclassification determinations or species-specific protective regulations be reevaluated on the basis of any final regulations. The existing protections for currently listed threatened species are within the discretion expressly delegated to the Secretaries by Congress.

Pursuant to section 10(j) of the Act, members of experimental populations are generally treated as threatened species and, pursuant to 50 CFR 17.81, populations are designated through population-specific regulation found in §§ 17.84–17.86. As under our existing practice, each such population-specific regulation will contain all of the applicable prohibitions, along with any exceptions to prohibitions, for that experimental population. None of the changes associated with this rulemaking will change existing special rules for experimental populations. Any 10(j) rules promulgated after the effective date of this rule that make applicable to a nonessential experimental population some or all of the prohibitions that statutorily apply to endangered species will not refer to 50 CFR 17.31(a); rather, they will instead independently articulate those prohibitions or refer to 50 CFR 17.21.

We are finalizing the revised regulations as proposed without further changes. In these final regulation revisions, we focus our discussion on significant and substantive comments we received during the comment period. For additional background on the statutory language, legislative history, and case law relevant to these regulations, please see our proposed regulation revision, which is available at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2018–0007.

This final rule is one of three related final rules that we are publishing in this issue of the **Federal Register**. All of these documents finalize revisions to various regulations that implement the Act. The revisions to the regulations in this rule are prospective; they are not intended to require that any previous listing or reclassification determination under section 4 of the Act be reevaluated.

Final Regulatory Revisions

Summary of Comments and Recommendations

In our proposed rule published on July 25, 2018 (83 FR 35174), we requested public comments on our specific proposed changes to 50 CFR part 17. We received several requests for public hearings and requests for extensions to the public comment period. However, we elected not to hold public hearings or extend the public comment period beyond the original 60-day public comment period. We received more than 69,000 submissions representing hundreds of thousands of individual commenters by the deadline on September 24, 2018. Many comments were nonsubstantive in nature, expressing either general support for or opposition to provisions of the proposed rule with no supporting information or

analysis or expressing opinions regarding topics not covered within the proposed regulation. We also received many detailed substantive comments with specific rationale for support of or opposition to specific portions of the proposed rule. Below, we summarize and respond to the significant, substantive comments sent by the September 24, 2018, deadline and provide responses to those comments.

Comment 1: Many commenters stated that rescinding the previous regulation, referred to as the ''blanket rules,'' will leave threatened species with no protections or prohibitions in place, which will result in their status declining even more and the Service being unable to conserve them.

Our Response: In the proposed rule, we stated our intention to finalize species-specific 4(d) rules concurrent with final threatened listing or reclassification determinations. In this final rule, we restate our intention to finalize species-specific section 4(d) rules concurrently with final listing or reclassification determinations. Finalizing a species-specific 4(d) rule concurrent with a listing or reclassification determination ensures that the species receives appropriate protections at the time it is added to the list as a threatened species (*e.g.,* we anticipate that foreign species 4(d) rules will generally include prohibitions of import and export and species-specific 4(d) rules for marine mammals will generally incorporate applicable provisions of the Marine Mammal Protection Act). This approach also adds efficiency, predictability, and transparency to the rulemaking process because it correlates the Service's analysis of threats impacting the species (as discussed in the final listing or reclassification rule) to its analysis of protective regulations for the species. The publication of **Federal Register** documents that propose and finalize both listing and 4(d) rules simultaneously adds administrative efficiencies and cost-savings to the listing process relative to the time and cost of conducting those two processes sequentially.

We expect this concurrent process to promote transparency and predictability in the rulemaking process for the regulated community. Publishing species-specific 4(d) rules concurrent with the classification rules provides the public knowledge of the primary drivers to the species' status. The 4(d) rule includes specific actions or activities that can be undertaken that would or would not impair species' conservation. In turn, this information may assist with streamlining future section 7 consultations. For example, if project activities could be tailored to avoid forms of take prohibited by the 4(d) rule, consultation on those activities should be more straightforward and predictable. Furthermore, we anticipate landowners would be incentivized to take actions that would improve the status of endangered species with the possibility of downlisting the species to threatened and potentially receiving regulatory relief in the resulting 4(d) rule. As a result, we believe these measures to increase public awareness, transparency, and predictability will enhance and expedite conservation.

Comment 2: Several commenters stated that rescinding the blanket rules will allow for political interference and industry pressure on the Service to reduce protections and prohibitions of threatened species at the detriment of species conservation.

Our Response: As explained in the preamble to the proposed regulation, the intent of this regulation is to focus prohibitions on the stressors contributing to the threatened status of the species and to facilitate the implementation of beneficial conservation efforts. This practice of tailoring regulations to individual threatened species is guided by the Service's extensive history of implementing the Act. Our determinations about which prohibitions, exceptions to the prohibitions, or protective regulations should be applied to threatened species have consistently been, and will continue to be, based upon the best available scientific and commercial information available to us at the time of listing.

Comment 3: Many commenters stated that FWS has a substantial listing and reclassification workload and lacks the additional resources necessary to promulgate species-specific 4(d) rules for every species added to the list as threatened. They stated that the additional resources necessary to promulgate additional rules will impact FWS' ability to put into place the protections necessary and species will be left unprotected.

Our Response: Promulgating species-specific 4(d) rules for every threatened species may require additional resources at the time of listing relative to our prior practice of defaulting to invoking the blanket rules. If historical percentages of threatened species and endangered species determinations were to continue into the future, we estimate that each year approximately four species would be listed as threatened species; therefore, we would develop four species-specific 4(d) rules per year. Historically, we finalized an average of 2 species-specific 4(d) rules per year (37 species-specific 4(d) rules over 21 years (Service 2019). However, in the past 10 years, we have promulgated 17 domestic and 6 foreign species-specific rules (2.3 per year) as compared to 12 domestic and 2 foreign species-specific rules in the 11 years prior (1.3 per year) (Service 2019). We expect to continue with an increased rate of issuing species-specific rules in the coming years. Therefore, we expect that we would promulgate species-specific rules for most or all species listed as threatened even if the blanket rule were to remain in place.

Developing species-specific 4(d) rules is a prudent and efficient use of our resources because of the benefits gained from tailoring protections specific to the needs of the species. When we tailor regulations by limiting the prohibitions to those activities that are causing the threat of extinction, we save the public and FWS resources by reducing the need for section 10 permits. Likewise, tailored regulations will encourage actions compatible with, or supportive of, a species' conservation. Tailored prohibitions may also assist the Service and other Federal agencies in streamlining the section 7 consultation processes for actions that result in forms of take that are not prohibited by a 4(d) rule. For example, the Services would have already determined that forms of take not prohibited by a 4(d) rule were compatible with the species' conservation, which should streamline our analysis on whether an action would jeopardize the continued existence of the species and would streamline the incidental take statement, if required. Species-specific regulations will also allow the Service to facilitate and promote conservation actions that will aid in the conservation of threatened species. In addition, because we intend to put in place species-specific rules at the time of listing (as noted in our response to comment (1)), we will continue to rely on our analysis of stressors to the species from the listing determination, including forms of ''take,'' that are acting on a species. Because of this concurrent analysis of all factors influencing the species carrying over from the listing determination, we anticipate the development of species-specific protective regulations will be more efficient than if done in separate rulemakings.

In general, the provisions of a 4(d) rule should be closely tied to the species' needs and primary factors influencing the biological status identified in the Species Status

Assessment (SSA) report or other analysis of the species' biological status. Determining which protective regulations or section 9 prohibitions or exceptions to prohibitions a species requires to address the stressors leading to threatened species status logically flows from our analyses at the time of listing. Furthermore, when developing new species-specific 4(d) rules, we intend to review existing species-specific 4(d) rules that could be used as a model or applied to the species in question. This approach would be beneficial when there are species with similar threats or that occur in a similar geographic area, or species with similar life histories or similar biological needs. For example, the Service has an existing species-specific 4(d) rule for threatened species within the parrot family, which is found at 50 CFR 17.41(c), that includes protective regulations for four different species. Where appropriate, the Service adds additional listed members of the parrot family to this rule. In this fashion, developing species-specific regulations will not be as time consuming or burdensome as the commenters predict because the Service will be able to rely on existing regulatory language and analysis. Similar examples are the Service's existing species-specific 4(d) rules for threatened primates (50 CFR 17.40(c)), crocodilians (50 CFR 17.42(c)), certain fish (50 CFR 17.44(c), (h), and (j)), and certain butterflies (50 CFR 17.47(a)).

Comment 4: Several commenters stated that the prior regulations for threatened species have been working to conserve threatened species for the last 40 years and FWS should not rescind them.

Our Response: We are required to develop regulations as described in section 4(d) of the Act that are necessary and advisable for the conservation of threatened species. Additionally, section 4(d) of the Act provides us the authority to prohibit specific forms of take. Developing species-specific 4(d) rules will enhance transparency to the regulated public because particular forms of incidental take that are prohibited or excepted will be enumerated in the species-specific 4(d) rule. The only thing that this rulemaking will change is that the decision about what regulations to put in place will now by necessity be in the form of promulgating a species-specific rule.

Although the blanket rules have worked, and will continue to work, to conserve already-listed threatened species, we believe that species-specific 4(d) rules for threatened species tailor species' protection with appropriate regulations that may incentivize conservation, reduce unneeded permitting, or streamline section 7 consultation processes as described above. In practice, the FWS has been promulgating more species-specific 4(d) rules in the last decade. The Service has finalized 22 species-specific 4(d) rules in the last decade (2009–2018) compared to finalizing 13 species-specific rules in the 12 years prior (1997–2008). Consequently, we have found significant benefits from developing and implementing species-specific 4(d) rules, such as removing redundant permitting requirements, facilitating implementation of beneficial conservation actions, and making better use of our limited personnel and fiscal resources by focusing prohibitions on the stressors contributing to the threatened status of the species.

This rule will facilitate beneficial conservation actions. For example, the species-specific 4(d) rule for the elfin-woods warbler (81 FR 40547, June 22, 2016) sets forth a comprehensive set of conservation measures regarding otherwise lawful activities for conversion of sun-grown to shade-grown coffee plantations, riparian buffer establishment, and reforestation and forested habitat enhancement. The 4(d) rule provides details on the timing and acceptable methods by which these activities can occur such that any incidental take would not be a violation of the Act. Thus, projects that meet the conservation measures for the elfin-woods warbler outlined in the species-specific 4(d) rule do not need an incidental take permit from the Service in order to proceed. Likewise, the species-specific 4(d) rule for the Kentucky arrow darter (81 FR 68984, October 5, 2016) contains recommended conservation measures that, when conducted in accordance with the 4(d) rule, ensure that incidental take would not be considered a violation of the Act. The species-specific 4(d) rule details activities such as in-stream restoration or reconfiguration, bank stabilization, bridge and culvert replacement or removal that must be conducted in accordance with conservation measures that maintain connectivity of habitat, minimize instream disturbance, and maximize the amount of in-stream cover. Therefore, projects that are conducted in accordance with the conservation measures in the species-specific 4(d) rule for the Kentucky arrow darter do not require an incidental take permit from the Service.

Comment 5: Several commenters stated that FWS did not provide enough justification or logical rationale for why the change is necessary.

Our Response: Our preamble to the proposed rule provides an explanation of why we proposed to change our prior practice of the blanket rules. This regulatory change to emphasize the creation of species-specific 4(d) rules is within the discretion provided by the Act. We recognize that our prior ''blanket rules'' were also considered ''reasonable and permissible'' constructions of section 4(d) of the Act. *Sweet Home Chapter of Communities for a Great Oregon* v. *Babbitt,* 1 F.3d. 1, 8 (D.C. Cir. 1993), *modified on other grounds on reh'g,* 17 F.3d 1463 (D.C. Cir. 1994), *rev'd on other grounds,* 515 U.S. 687 (1995). For this reason, we are not altering the existence of the ''blanket rules'' for species already listed as threatened. However, we conclude that moving to an emphasis on species-specific regulations is also a reasonable and permissible interpretation of the discretion found in section 4(d) of the Act. As explained elsewhere, we believe this change will aid in the conservation of species. We also consider this change to further highlight the statutory distinction between species meeting the definitions of ''endangered species'' and ''threatened species.'' This change would make our regulatory approach for threatened species similar to the approach that NMFS has taken since Congress added section 4(d) to the Act. NMFS did not adopt regulations that extended most of the prohibitions for endangered species to threatened species as we did. Rather, when putting into place protections for threatened species, NMFS promulgates the appropriate regulations regarding section 9 prohibitions, exceptions to prohibitions, or other regulatory protections tailored specifically to that species. In more than 40 years of implementing the Act, NMFS has successfully implemented the provisions of the Act using this approach.

Moreover, the Service has gained considerable experience in developing species-specific rules over the past decade. As noted elsewhere in this response to comments, we have found species-specific 4(d) rules beneficial in removing redundant permitting requirements, facilitating implementation of beneficial conservation actions, and making better use of our limited personnel and fiscal resources by focusing prohibitions on the stressors contributing to the threatened status of the species. For instance, some species-specific 4(d) rules would not require a Federal permit for incidental take resulting from activities that are conducted under a

State permit if the permit was issued pursuant to a State program that furthers the goals of the Act. Other species-specific 4(d) rules may set forth exceptions to take prohibitions for activities that are de minimis in their effect on the species, or beneficial when conducted in adherence to certain timeframes or using certain protocols (*e.g.,* elfin woods warbler species-specific 4(d) rule; 81 FR 40547, June 22, 2016). This regulatory revision allows us to capitalize on these benefits in tailoring section 9 prohibitions, exceptions to prohibitions, or other regulatory protections to the conservation needs of the species.

We conclude that, while the prior ''blanket rules'' were one possible means of implementing section 4(d) of the Act, the changes finalized in this document will better tailor protections to the needs of the threatened species while also providing meaning to the statutory distinction between species meeting the definitions of ''endangered species'' and ''threatened species.''

Comment 6: Some commenters stated that this change is not actually aligning the Service's practice with NMFS, because NMFS does not consistently promulgate species-specific 4(d) rules for threatened species.

Our Response: NMFS does not have a default blanket rule for threatened plants and animals but rather approaches each species on a case-by-case basis on the basis of the discretion afforded under section 4(d). Therefore, rescinding the Service's blanket rules will closely align the two agencies' regulatory approaches. Although we have indicated that our intention is to promulgate species-specific 4(d) rules at the time of listing, we do not read the Act to require that we promulgate a 4(d) rule whenever we list a species as a threatened species.

Comment 7: Some commenters stated that if a threatened species did not have section 9 prohibitions, private landowners would not have an incentive to conserve species and landowners may be unlikely to enter into partnership agreements to conserve threatened species.

Our Response: We intend for each species listed or reclassified as a threatened species to have a species-specific 4(d) rule that outlines section 9 prohibitions, exceptions to prohibitions, or other regulatory protections as appropriate. Any species-specific 4(d) will follow the Service's standard rulemaking process, which by law includes an opportunity for public comment on a proposed rule. As a result, private landowners will be aware of proposed regulations and have an opportunity to proactively engage in voluntary conservation efforts. By meaningfully recognizing the differences in the regulatory framework between endangered species and threatened species, we believe that crafting species-specific 4(d) rules will incentivize conservation for both endangered species and threatened species. Private landowners and other stakeholders may see more of an incentive to work on recovery actions for endangered species, with an eventual goal of downlisting to threatened species status with a species-specific 4(d) rule that might result in reduced regulation.

For threatened species, 4(d) rules can limit the scope of prohibitions so that they do not apply to certain activities conducted pursuant to conservation efforts contained in conservation plans or agreements. We anticipate that private parties, including landowners, will be incentivized to participate in conservation efforts identified in the 4(d) rule that protect the species. In these instances, specified activities would be able to continue without Federal regulation because of participation in the identified conservation plan. At the same time, the plan will provide conservation to the threatened species. In addition, tailoring the prohibitions applicable to a threatened species identifies for the public the specific actions or activities that are driving the species to a threatened status. Developing species-specific 4(d) rules will incentivize positive conservation efforts to improve the species' status such that it no longer warrants listing.

Comment 8: Several commenters stated that the Service should include binding timeframes in the regulatory text as to when the final 4(d) rule would be promulgated. Some of these included the suggestion that it be within 90 days of the final listing, others stated that it should be concurrent with listing, and others did not provide a specific time period but stated that a set timeframe would be most transparent to the public.

Our Response: As stated above, we intend to finalize species-specific 4(d) rules concurrently with final listing or reclassification determinations. We believe this approach will be most efficient and will also ensure that threatened species have in place the protective regulations supporting their recovery. We considered including a regulatory timeframe to reflect our intention to promulgate 4(d) rules at the time of listing, but ultimately determined that creating a binding requirement was not needed. The Act does not mandate a specific requirement to implement protective regulations concurrently with threatened determinations.

Comment 9: We received many comments on topics that were not specifically addressed in our proposed regulatory amendment, but, instead, focus on issues that may arise during implementation of this rulemaking. These included recommendations on which existing species-specific 4(d) rules would provide a good model for future rules, opinions as to the scope of the Service's discretion in extending section 9 prohibitions in future rules, views on how the Service should interpret the terms ''necessary and advisable'' in the Act, and suggestions of approaches to take in future guidance documents on how to develop species-specific 4(d) rules.

Our Response: The Service appreciates the many insightful comments and suggestions we received on developing species-specific 4(d) rules. While that input may inform the development of future species-specific 4(d) rules, policies, or guidance, in the interests of efficiency we are finalizing the revisions for which we specifically proposed regulatory text. The Service considered those comments, but is required only to respond to ''significant'' comments—those ''comments which, if true, . . . would require a change in [the] proposed rule,'' *Am. Mining Cong.* v. *United States EPA,* 907 F.2d 1179, 1188 (DC Cir. 1990) (quoting *ACLU* v. *FCC,* 823 F.2d 1554, 1581 (DC Cir. 1987)). Comments that either were outside the scope of the issues we specifically addressed in our proposed regulatory amendments, or that raise questions that may arise during future implementation of this rulemaking, are not ''significant'' in the context of the proposed rule. *See also Home Box Office, Inc.* v. *FCC,* 567 F.2d 9, 35 n. 58 (DC Cir. 1977), *cert. denied,* 485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988). We therefore will not respond to them at this time. However, to the extent commenters raised questions about the substance of future species-specific 4(d) regulations that have not been proposed, we urge commenters to provide this feedback when a proposed species-specific 4(d) regulation raises these concerns. Any species-specific 4(d) regulation will be proposed and subject to public comment prior to adoption by the Service.

After a review and careful consideration of all of the public comments received during the open public comment period, we have finalized this rule as proposed.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is 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 rule in a manner consistent with these requirements. This final rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Executive Order 13771

This final rule is an Executive Order 13771 deregulatory action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *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, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

This rulemaking revises the regulations for 4(d) rules for species determined to meet the definition of a ''threatened species'' under the Act. This final rule is fundamentally a procedural change for the Service that affects only the form of the Service's decisions with respect to regulations that provide for the conservation of threatened species. The Service is therefore the only entity that is directly affected by this final regulation change at 50 CFR part 17. The statute states, ''Whenever any species is listed as a threatened species . . ., the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species.'' This provision requires the Secretary to make a decision about what protections to apply to threatened species. The blanket rules established that, as a general principle, the protections that the statute prescribes for endangered species are also necessary and advisable to provide for the conservation of threatened species. But even with the blanket rules in place, it fell to the Secretary to decide, upon listing or classifying individual species as threatened, what protections to put in place for the species. That decision was in the form of whether to allow the relevant blanket rule to apply or to promulgate a species-specific rule. The need for that decision is even ensconced in the blanket rules themselves—they expressly contemplate that the Secretary could choose to promulgate a ''special rule'' that would replace the blanket rule and ''contain all the applicable prohibitions and exceptions.'' 50 CFR 17.31(c) and 17.71(c).

With promulgation of this rule, when species get listed in the future, the blanket rules will no longer be in place, but the Secretary will still be required to make a decision about what regulations to put in place for that species. The only thing that this rulemaking will change is that the decision about what regulations to put in place will now necessarily be in the form of promulgating a species-specific rule. To the extent that any regulations that provide for the conservation of threatened species affect external entities, those effects result from the substance of the subsequent rulemaking where the Service will decide what regulations would provide for the species' conservation, not from this rulemaking, which affects only the form of that decision. As a result, no external entities—including any small businesses, small organizations, or small governments—will experience any economic impacts from this rule. We certify that this final rule will not have a significant economic effect on a substantial number of small entities.

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.*):

(a) On the basis of information contained in the *Regulatory Flexibility Act* section above, this final rule will not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the final rule will not place additional requirements on any city, county, or other local municipalities.

(b) This final rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This final rule will not impose obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this final rule will not have significant takings implications. This final rule will not pertain to ''taking'' of private property interests, nor will it directly affect private property. A takings implication assessment is not required because this final rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This final rule will substantially advance a legitimate government interest (conservation and recovery of threatened species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this final rule would have significant Federalism effects and have determined that a federalism summary impact statement is not required. This final rule pertains only to prohibitions for activities pertaining to threatened species under the Endangered Species

Act and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This final rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This final rule will clarify the prohibitions to threatened species under the Endangered Species Act.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' and the Department of the Interior's manual at 512 DM 2, we have considered effects of this final rule on federally recognized Indian Tribes. Two informational webinars were held on July 31 and August 7, 2018, to provide additional information to interested Tribes regarding the proposed regulations. After the opening of the public comment period, we received multiple requests for coordination or Government-to-Government consultation from multiple tribes: Cowlitz Indian Tribe; Swinomish Indian Tribal Community; The Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of Warm Springs, Oregon; Quinault Indian Nation; Makah Tribe; Confederated Tribes of the Umatilla Indian Reservation; and the Suquamish Tribe. We subsequently hosted a conference call on November 15, 2018, to listen to Tribal concerns and answer questions about the proposed regulations. On March 6, 2019, Service representatives attended the Natural Resources Committee Meeting of the United and South and Eastern Tribes' Impact Week conference in Arlington (Crystal City), VA. At this meeting, we presented information, answered questions, and held discussion regarding the regulatory changes.

The Service concludes that the changes to these implementing regulations make general changes to the ESA implementing regulations and do not directly affect specific species or Tribal lands or interests. As explained earlier, the only thing that this rulemaking will change is that the decision about what regulations to put in place to provide for the conservation of threatened species will now necessarily be in the form of promulgating a species-specific rule. To the extent that any regulations that provide for the conservation of threatened species affect federally recognized Indian Tribes, those effects will result from the substance of the subsequent rulemaking where the Service will decide what regulations would provide for the species' conservation, not from this rulemaking, which affects only the form of that decision. Therefore, we conclude that this regulation does not have ''tribal implications'' under section 1(a) of E.O. 13175 and formal government-to-government consultation is not required by E.O. 13175 and related policies of the Department of the Interior. We will continue to collaborate with Tribes on issues related to federally listed species and work with them as we implement the provisions of the Act. *See* Joint Secretarial Order 3206 (''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' June 5, 1997).

Paperwork Reduction Act

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. 3501–3520) 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 (NEPA)

We analyzed this final rule in accordance with the criteria of NEPA, the Department of the Interior regulations on implementation of NEPA (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 8). We have determined that, to the extent that the proposed action would result in reasonably foreseeable effects to the human environment, the final regulation is categorically excluded from further NEPA review and that no extraordinary circumstances are present. The rule qualifies for two categorical exclusions listed at 43 CFR 46.210(i). First, the amendments are of a legal, technical, or procedural nature. Second, any potential impacts of this rule are too broad, speculative, and conjectural to lend themselves to meaningful analysis and will be examined as part of any NEPA analysis, if applicable, in stand-alone species-specific 4(d) rules. The revisions finalized in this action are intended to clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for determining what protective regulations are appropriate for species added to or reclassified as threatened species on the Lists of Endangered and Threatened Wildlife and Plants.

These revisions are an example of an action that is fundamentally administrative, technical, or procedural in nature. As explained with respect to the Regulatory Flexibility Act, this final rule is fundamentally a procedural change for the Service that affects only the form of the Service's decisions with respect to regulations that provide for the conservation of threatened species. The Service is, therefore, the only entity that is directly affected by this final regulation change at 50 CFR part 17. The statute states, ''Whenever any species is listed as a threatened species . . ., the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species.'' This provision requires the Secretary to make a decision about what protections to apply to threatened species. When species get listed in the future, the blanket rules will no longer be in place, but the Secretary will still be required to make a decision about what regulations to put in place for that species. The only thing that this rulemaking will change is that the decision about what regulations to put in place will now necessarily be in the form of promulgating a species-specific rule. To the extent any regulations that provide for the conservation of threatened species significantly affect the environment, those effects result from the substance of the subsequent rulemaking where the Service will decide what regulations would provide for the species' conservation, not from this rulemaking, which affects only the form of that decision. Therefore, this final rule falls within the categorical exclusion for rulemakings that are administrative, procedural, or technical in nature.

We completed an environmental action statement for the categorical exclusion for the revised regulations in 50 CFR part 17. The environmental action statement is available at *http://www.regulations.gov* in Docket No. FWS–HQ–ES–2018–0007.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule is not expected to affect energy supplies, distribution, and use. As explained earlier, the only thing that this rulemaking will change is that the decision about what regulations to put in place to provide for the

conservation of threatened species will now necessarily be in the form of promulgating a species-specific rule. To the extent any regulations that provide for the conservation of threatened species affect energy supply, distribution, or use, those effects will result from the substance of the subsequent rulemaking where the Service will decide what regulations would provide for the species' conservation, not from this rulemaking, which affects only the form of that decision. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby 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. Revise § 17.31 to read as follows:

§ 17.31 Prohibitions.

(a) Except as provided in §§ 17.4 through 17.8, or in a permit issued under this subpart, all of the provisions of § 17.21, except § 17.21(c)(5), shall apply to threatened species of wildlife that were added to the List of Endangered and Threatened Wildlife in § 17.11(h) on or prior to September 26, 2019, unless the Secretary has promulgated species-specific provisions (see paragraph (c) of this section).

(b) In addition to any other provisions of this part, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, take those threatened species of wildlife that are covered by an approved cooperative agreement to carry out conservation programs.

(c) Whenever a species-specific rule in §§ 17.40 through 17.48 applies to a threatened species, none of the provisions of paragraphs (a) and (b) of this section will apply. The species-specific rule will contain all the applicable prohibitions and exceptions.

■ 3. Revise § 17.71 to read as follows:

§ 17.71 Prohibitions.

(a) Except as provided in a permit issued under this subpart, all of the provisions of § 17.61 shall apply to threatened species of plants that were added to the List of Endangered and Threatened Plants in § 17.12(h) on or prior to September 26, 2019, with the following exception: Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of § 17.61, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container during the course of any activity otherwise subject to the regulations in this subpart.

(b) In addition to any provisions of this part, any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those threatened species of plants that are covered by an approved cooperative agreement to carry out conservation programs.

(c) Whenever a species-specific rule in §§ 17.73 through 17.78 applies to a threatened species, the species-specific rule will contain all the applicable prohibitions and exceptions.

Dated: August 12, 2019.

David L. Bernhardt,

Secretary. Department of the Interior.

[FR Doc. 2019–17519 Filed 8–26–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2018–0030; FF09M21200–189–FXMB1231099BPP0]

RIN 1018–BD10

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2019–20 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on August 27, 2019.

ADDRESSES: You may inspect comments received on the special hunting regulations and Tribal proposals during normal business hours at U.S. Fish and Wildlife Headquarters, 5275 Leesburg Pike, Falls Church, VA 22041–3803 or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2018–0030. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's website at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2018–0030.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the July 8, 2019, **Federal Register** (84 FR 32385), we proposed special migratory bird hunting regulations for the 2019–20 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the June 14, 2018, **Federal Register** (83 FR 27836), we requested that tribes desiring special hunting regulations in the 2019–20 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

The final rule described here is the final in the series of proposed and final rulemaking documents for Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2019–20 Season. This rule sets hunting seasons, hours, areas, and limits for migratory game bird species on reservations and ceded territories. This final rule is the culmination of the rulemaking process for the Tribal migratory game bird hunting seasons, which started with the June 14, 2018, proposed rule. This final rule sets the Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2019–20 Season.

Population Status and Harvest

Each year we publish various species status reports that provide detailed information on the status and harvest of migratory game birds, including information on the methodologies and results. These reports are available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our website at *https://www.fws.gov/birds/surveys-and-data/reports-and-publications/population-status.php.*

We used the following reports: Adaptive Harvest Management, 2019 Hunting Season (September 2018); American Woodcock Population Status, 2018 (August 2018); Band-tailed Pigeon Population Status, 2018 (August 2018); Migratory Bird Hunting Activity and Harvest During the 2016–17 and 2017–18 Hunting Seasons (August 2018); Mourning Dove Population Status, 2018 (August 2018); Status and Harvests of Sandhill Cranes, Mid-continent, Rocky Mountain, Lower Colorado River Valley and Eastern Populations, 2018 (August 2018); and Waterfowl Population Status, 2018 (August 2018).

Comments and Issues Concerning Tribal Proposals

For the 2019–20 migratory bird hunting season, we proposed regulations for 31 Tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. However, at that time, we noted in the July 8, 2019, proposed rule that we were proposing seasons for five Tribes who submitted proposals in past years but from whom we had not yet received proposals this year. We did not receive proposals from four of those Tribes and, therefore, have not included them in this final rule.

The comment period for the July 8 proposed rule closed on August 7, 2019. We received one comment on our July 8 proposed rule, which announced proposed seasons for migratory bird hunting by American Indian Tribes. The commenting individual expressed general support for implementing the tribal regulations.

Required Determinations

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This action is not subject to the requirements of Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) because it establishes annual harvest limits related to routine hunting or fishing.

National Environmental Policy Act (NEPA) Consideration

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2019–20,'' with its corresponding July 2019, finding of no significant impact. The programmatic document, as well as the separate environmental assessment, is available on our website at *https://www.fws.gov/birds/index.php,* or from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Secretary shall insure that any action authorized, funded, or carried 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 critical habitat. Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant

because it will have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2019–20 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion under Regulatory Flexibility Act, below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2018–19 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2018–19 season. For the 2019–20 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $334–$440 million with a mid-point estimate of $387 million. We also chose alternative 3 for the 2009–10 through 2018–19 seasons. The 2019–20 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2018–0030.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, 2013, 2018, and 2019. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is generally conducted at 5-year intervals. The 2019 Analysis is based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2019.

Copies of the analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2018–0030.

Small Business Regulatory Enforcement Fairness Act

This final rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, ''North American Woodcock Singing Ground Survey'' (expires 6/30/2021).
- 1018–0023, ''Migratory Bird Surveys, 50 CFR 20.20'' (expires 8/31/2020). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, ''Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20'' (expires 06/30/2021).

You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. We have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually

prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting, by its nature, operates under a time constraint as seasons must be established each year or hunting seasons remain closed. However, we intend that the public be provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements. Thus, when the preliminary proposed rulemaking was published, we established what we concluded were the longest periods possible for public comment and the most opportunities for public involvement. We also provided notification of our participation in multiple Flyway Council meetings, opportunities for additional public review and comment on all Flyway Council proposals for regulatory change, and opportunities for additional public review during the Service Regulations Committee meeting. Therefore, sufficient public notice and opportunity for involvement have been given to affected persons regarding the migratory bird hunting frameworks for the 2019–20 hunting seasons. Further, after establishment of the final frameworks, States and Tribes need sufficient time to conduct their own public processes to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. Thus, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes might not be able to meet their own administrative needs and requirements.

For the reasons cited above, we find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this rule will take effect immediately upon publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703 *et seq.,* and 16 U.S.C. 742a–j.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

Unless specifically provided for below, all of the regulations contained in 50 CFR part 20 apply to the seasons listed herein.

(a) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).*

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (Including Mergansers)

Season Dates: Open September 21, 2019, through January 6, 2020.

Scaup

Season Dates: Open September 21 through December 16, 2019.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, three scaup (when open), two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 25, respectively.

Geese

Dark Geese

Season Dates: Open September 21, 2019, through January 6, 2020.

Daily Bag and Possession Limits: 4 Canada geese and brant in the aggregate, and 10 white-fronted geese. The possession limit is three times the daily bag limit.

Light Geese

Season Dates: Same as for dark geese.

Daily Bag and Possession Limits: 20 and 60, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are one-half hour before sunrise to one-half hour after sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(b) *Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).*

Ducks

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of

which may be hens), 9 black ducks, 9 scaup, 9 wood ducks, 9 redheads, 9 pintails, and 9 canvasbacks.

Reservation:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 6 black ducks, 6 scaup, 6 redheads, 6 pintails, 6 wood ducks, and 6 canvasbacks.

Mergansers

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

Reservation:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese

All Areas:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules)

All Areas:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sandhill Cranes

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: Two sandhill cranes. Crane carcass tags are required prior to hunting.

Sora and Virginia Rails

All Areas:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe

All Areas:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: Eight common snipe.

Woodcock

All Areas:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: Three woodcock.

Mourning Doves

All Areas:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 30 mourning doves.

Tundra and Trumpeter Swans

Reservation Only:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: One swan. A swan carcass tag is required prior to hunting.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits for migratory birds. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(c) *Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 1, 2019, through January 20, 2020.

Daily Bag Limit: 35 ducks, which may include no more than 8 pintail, 4 canvasback, 8 black ducks, 5 hooded merganser, 8 wood ducks, 8 redheads, and 20 mallards (only 10 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, 2019, through February 15, 2020.

Daily Bag Limit: 15 geese.

Other Geese (White-Fronted Geese and Brant)

Season Dates: Open September 20 through December 30, 2019.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1 through November 14, 2019.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: Open September 1 through November 14, 2019.

Daily Bag Limit: 25 mourning doves.

Sandhill Crane

Season Dates: Open September 1 through November 14, 2019.

Daily Bag Limit: 2 sandhill crane, with a season limit of 10.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(d) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

The 2019–20 waterfowl hunting season regulations apply to all treaty areas (except where noted):

Ducks

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 50 ducks in the 1837 and 1842 Treaty Area; 30 ducks in the 1836 Treaty Area.

Mergansers

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2019. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag and Possession Limits: 20, singly, or in the aggregate, 25.

Common Snipe

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 16 common snipe.

Woodcock

Season Dates: Begin September 4 and end December 31, 2019.

Daily Bag Limit: 10 woodcock.

Mourning Dove: 1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end November 29, 2019.

Daily Bag Limit: 15 mourning doves.

Sandhill Cranes

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 5 cranes in the 1837 and 1842 Treaty Area and no season bag limit; 3 crane and no season bag limit in the 1836 Treaty Area.

Swans: 1837 and 1842 Ceded Territories Only

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag/Season Limit: 5 swans. All harvested swans must be registered by presenting the fully-feathered carcass to a tribal registration station or GLIFWC warden, to be identified to species. If the total number of trumpeter swans harvested reaches 10, the swan season will be closed by emergency tribal rule.

General Conditions

A. All tribal members are required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members are required to comply with tribal codes that are no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations.

C. Particular regulations of note include:

1. Nontoxic shot is required for all waterfowl hunting by tribal members.

2. Tribal members in each zone must comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. There are no possession limits, with the exception of 25 rails (in the aggregate). For purposes of enforcing bag limits, all migratory birds in the possession and custody of tribal members on ceded lands are considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands do not count as part of any off-reservation bag or possession limit.

4. There are no shell limit restrictions.

5. Hunting hours are from 30 minutes before sunrise to 30 minutes after sunset, except that, within the 1837 and 1842 ceded territories hunters may use non-mechanical nets or snares that are operated by hand to take those birds subject to an open hunting season at any time. Hunters shall be permitted to capture, without the aid of other devices (*i.e.,* by hand) and immediately kill birds subject to an open season, regardless of time of day. See #7 below for further explanation.

6. An experimental application of electronic calls (e-calls) will be implemented in the 1837 and 1842 ceded territories. Up to 50 tribal hunters will be allowed to use e-calls. Individuals using e-calls will be required to obtain a special permit; they will be required to complete a hunt diary for each hunt where e-calls are used; and they will be required to submit the hunt diary to the Commission within two (2) weeks of the end of the season in order to be eligible to obtain an e-call permit for the following year. Required information will include the date, time and location of the hunt, number of hunters, the number of each species harvested per hunting event, if other hunters were in the area, any interactions with other hunters, and other information deemed appropriate. Diary results will be summarized and documented in a Commission report, which will be submitted to the Service. Barring unforeseen results, this experimental application would be replicated for 3 years, after which a full evaluation would be completed.

7. Within the 1837 and 1842 ceded territories, tribal members will be allowed to use non-mechanical, hand-operated nets (*i.e.,* throw/cast nets or hand-held nets typically used to land fish) and/or hand-operated snares, and may chase and capture migratory birds without the aid of hunting devices (*i.e.,* by hand). At this time, non-attended nets or snares shall not be authorized under this regulation. Tribal members using nets or snares to take migratory birds, or taking birds by hand, will be required to obtain a special permit; they will be required to complete a hunt diary for each hunt where these methods are used; and they will be required to submit the hunt diary to the Commission within two (2) weeks of the end of the season in order to be eligible to obtain a permit to net migratory birds for the following year. Required information will include the date, time and location of the hunt, number of hunters, the number of each species harvested per hunting event, and other information deemed appropriate. Diary results will be summarized and documented in a Commission report, which will be submitted to the Service. Barring unforeseen results, this experimental application would be replicated for 3 years, after which a full evaluation would be completed.

(e) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).*

Ducks (Including Mergansers)

Season Dates: Open October 6 through November 30, 2019.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, two pintail, two redheads, two canvasback, and three scaup. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 6 through November 30, 2019.

Daily Bag and Possession Limits: Two and six, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(f) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).*

Nontribal Hunters on Reservation and Ceded Lands

Geese

Season Dates: Open September 21 through September 22, 2019; open September 28 through September 29, 2019; and open October 1, 2019, through January 8, 2020. During these periods, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 6 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late season. The possession limit is twice the daily bag limit.

Ducks

Season Dates: Open September 21 through September 22, 2019; open September 28 through September 29, 2019; and open October 1, 2019, through January 8, 2020.

Scaup

Season Dates: Open October 1 through December 25, 2019.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 2 canvasback, 3 scaup (when open), and 2 redheads. The possession limit is twice the daily bag limit.

Tribal Members on Reservation and Ceded Lands

Geese

Season Dates: Open October 1, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits for the late season. The possession limit is twice the daily bag limit.

Ducks

Season Dates: Open October 1, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 2 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) *Klamath Tribe, Chiloquin, Oregon (Tribal Members Only).*

Ducks and Coots

Season Dates: Open October 5, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 9 and 18, respectively.

Geese

Season Dates: Open October 5, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 9 and 18, respectively.

General: Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(h) *Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 14 through December 31, 2019.

Daily Bag Limits: 10 ducks, including no more than 5 pintail, 5 canvasback, and 5 black ducks.

Geese

Season Dates: Open September 14 through December 31, 2019.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(i) *Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).*

1836 Ceded Territory and Tribal Reservation:

Ducks

Season Dates: Open September 1, 2019, through January 26, 2020.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (2 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 bufflehead, 1 hooded merganser, and 2 canvasback.

Coots and Gallinules

Season Dates: Open September 14, 2019, through January 26, 2020.

Daily Bag Limits: Five coot and five gallinule.

Canada Geese

Season Dates: Open September 1, 2019, through February 3, 2020.

Daily Bag Limit: Five.

White-fronted Geese, Brant, and Snow Geese

Season Dates: Open September 7 through December 9, 2019.

Daily Bag Limit: Five.

Woodcock, Mourning Doves, Snipe, and Sora and Virginia Rails

Season Dates: Open September 1 through November 11, 2019.

Daily Bag Limit: 5 woodcock and 10 each of the other species.

General conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2019–20 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20. Shooting hours will be from one-half hour before sunrise to sunset.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

E. Possession limits are twice the daily bag limits.

(j) *The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limits: 20 ducks, including no more than 5 hen mallards, 5 black ducks, 5 redheads, 5 wood ducks, 5 pintail, 5 scaup, and 5 canvasback.

Mergansers

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limits: 10 mergansers, including no more than 5 hooded mergansers.

Coots and Gallinules

Season Dates: Open September 15 through December 31, 2019.

Daily Bag Limit: 20.

Canada Geese

Season Dates: Open September 1, 2019, through February 8, 2020.

Daily Bag Limit: 20 in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2019.

Daily Bag Limit: 20.

Snipe

Season Dates: Open September 1 through December 31, 2019.
Daily Bag Limit: 15.

Mourning Doves

Season Dates: Open September 1 through November 14, 2019.
Daily Bag Limit: 15.

Woodcock

Season Dates: Open September 1 through December 1, 2019.
Daily Bag Limit: 10.

Sandhill Cranes

Season Dates: Open September 1 through December 1, 2019.
Daily Bag Limit: Two.
General: Possession limits are twice the daily bag limits.

(k) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).*

Tribal Members

Ducks, Mergansers, and Coots

Season Dates: Open September 1, 2019, through March 10, 2020.
Daily Bag and Possession Limits: Six ducks, including no more than two hen mallard and five mallards total, two pintail, two redheads, two canvasback, three wood ducks, three scaup, two bonus teal during September 1 through 16, 2019, and one mottled duck. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2019, through March 10, 2020.
Daily Bag and Possession Limits: 6 and 18, respectively.

White-fronted Geese

Season Dates: Open September 1, 2019, through March 10, 2020.
Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open September 1, 2019, through March 10, 2020.
Daily Bag Limit: 20.

Dove

Season Dates: Open September 1, 2019, through January 31, 2020.
Daily Bag Limit: 15.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open October 5, 2019, through January 9, 2020.
Daily Bag and Possession Limits: Six ducks, including five mallards (no more of which can be two hen mallard), three scaup, two canvasback, two redheads, three wood ducks, one mottled duck, one pintail, and two bonus blue-winged teal during October 6 through October 21, 2019. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 26, 2019, through February 9, 2020.
Daily Bag and Possession Limits: 6 and 18, respectively.

White-Fronted Geese

Season Dates: Open October 26, 2019, through January 21, 2020.
Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open October 26, 2019, through February 9, 2020; and open February 11 through March 10, 2020.
Daily Bag and Possession Limits: 50 and no possession limit.

Dove

Season Dates: Open September 1 through November 29, 2019.
Daily Bag Limit: 15.
General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot and shooting hours. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(l) [Reserved.]

(m) *Makah Indian Tribe, Neah Bay, Washington (Tribal Members).*

Band-Tailed Pigeons

Season Dates: Open September 21 through October 27, 2019.
Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 21, 2019, through January 25, 2020.
Daily Bag Limit: Seven ducks including no more than five mallards (only two of which can be a hen), one redhead, one pintail, three scaup, and one canvasback. The seasons on wood duck and harlequin are closed. The coot daily bag limit is 25.

Geese

Season Dates: Open September 21, 2019, through January 25, 2020.
Daily Bag Limit: Four, including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.
General Conditions:
All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:
1. As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 300 feet of an occupied area.
2. Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.
3. The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.
4. Only Service approved nontoxic shot is allowed; the use of lead shot is prohibited.
5. The use of dogs is permitted to hunt waterfowl.
6. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.
7. Open hunting areas are: Makah Reservation except for designated wilderness areas and within one mile of the Cape Flattery and Shi-shi Trails. Off-Reservation Hunting Areas as specified in the General Hunting Regulations.

(n) *Muckleshoot Indian Tribe, Auburn, Washington (Tribal Members Only).*

Band-Tailed Pigeons, Mourning Doves, and Snipe

Season Dates: Open September 1, 2019, through March 10, 2020.
Daily Bag Limits: 2, 15, and 8, respectively.

Ducks (Including Coots)

Season Dates: Open September 1, 2019, through March 10, 2020.
Daily Bag Limits: Seven ducks, including no more than two hen mallards, one mottled duck, two canvasback, three scaup, two redheads, two scoter, two long-tailed ducks, two goldeneye, and two pintail. Coot daily bag limit is 25. The Tribe has a limit on harlequin ducks of one per season.

Geese

Season Dates: Open September 1, 2019, through March 10, 2020.
Daily Bag Limits: 4 Canada geese, 6 light geese, 10 white-fronted geese, and 2 brant. There is a year-round closure on dusky Canada geese.

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

1. Hunting can occur on reservation and off reservation on lands where the Tribe has treaty-reserved hunting rights, or has documented traditional use.

2. Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half after sunset.

3. Hunters must be eligible, enrolled Muckleshoot Tribal members and must carry their Tribal identification while hunting.

4. Tribal members hunting migratory birds must also have a combined Migratory Bird Hunting Permit and Harvest Report Card.

5. The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

6. Hunting for migratory birds is with shotgun only. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

(o) *Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).*

Band-Tailed Pigeons

Season Dates: Open September 1 through September 30, 2019.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through September 30, 2019.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers and Coots)

Season Dates: Open September 21, 2019, through January 6, 2020.

Scaup

Season Dates: Open September 21 through December 16, 2019.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one mottled duck, two canvasback, three scaup (when open), two redheads, and one pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 21, 2019, through January 6, 2020.

Daily Bag and Possession Limits: 4 and 12, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(p) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).*

Ducks (Including Mergansers)

Season Dates: Open September 14 through December 8, 2019.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1 through December 31, 2019.

Daily Bag and Possession Limits: 5 Canada geese with a possession limit of 10. A seasonal quota of 500 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 1 through November 3, 2019.

Daily Bag and Possession Limits: Two and four woodcock, respectively.

Doves

Season Dates: Open September 1 through November 3, 2019.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits, which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(q) *Point No Point Treaty Council, Kingston, Washington (Tribal Members Only).*

Jamestown S'Klallam Tribe

Ducks

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: Seven ducks, including no more than one harlequin duck per season.

Geese

Season Dates: Open September 7, 2019, through March 10, 2020.

Daily Bag and Possession Limits: The daily bag limits for Canada geese, light geese, and white-fronted geese are 5, 3, and 10, respectively. There is a year-round closure on dusky Canada geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 11 through January 26, 2020.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 7, 2019, through February 2, 2020.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 7, 2019, through January 20, 2020.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 7, 2019, through March 10, 2020.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 7, 2019, through January 20, 2020.

Daily Bag and Possession Limits: Two and four pigeons, respectively.

Port Gamble S'Klallam Tribe

Ducks

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one canvasback, one pintail, two redhead, four scoters, and no more than one harlequin duck per season.

Geese

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: The daily bag limits for Canada geese, light geese, and white-fronted geese are 5, 3, and 10, respectively. There is a year-round closure on dusky Canada geese.

Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 9, 2019, through January 31, 2020.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: 7 and 14 coots, respectively.

Mourning Doves

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: Two and four pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Point No Point Tribal Council pursuant to tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(r) *The Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Mt. Pleasant, Michigan (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limit: 25 doves.

Ducks

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limits: 20, including no more than 5 hen mallard, 5 wood duck, 5 black duck, 5 pintail, 5 redhead, 5 scaup, and 5 canvasback.

Mergansers

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limit: 10, including no more than 5 hooded mergansers.

Canada Geese

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limit: 20 in the aggregate.

Woodcock and Mourning Dove

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limits: 10 woodcock and 25 doves.

Common Snipe

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limits: 20 in the aggregate.

Sandhill Crane

Season Dates: Open September 1, 2019, through January 31, 2020.

Daily Bag Limits: One.

General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Saginaw Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(s) *Sauk-Suiattle Indian Tribe, Darrington, Washington (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag Limits: 10 doves.

Band-Tailed Pigeons

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag Limits: 10 pigeons.

Ducks

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag Limits: 20.

Geese

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag Limit: 10 geese.

Coots

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag Limit: 25 coots.

Brant

Season Dates: Open September 1, 2019, through March 10, 2020.

Daily Bag Limits: Five brant.

General: Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(t) *Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1 through November 14, 2019.

Daily Bag Limit: 10 doves.

Teal

Season Dates: Open September 1 through December 31, 2019.

Daily Bag Limits: 20 in the aggregate.

Ducks

Season Dates: Open September 15 through December 31, 2019.

Daily Bag Limits: 20, including no more than 10 mallards (only 5 of which may be hens), 5 canvasback, 5 black duck, and 5 wood duck.

Mergansers

Season Dates: Open September 15 through December 31, 2019.

Daily Bag Limit: 10 in the aggregate.

Geese

Season Dates: Open September 1 through December 31, 2019.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1 through December 31, 2019.

Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 2 through December 1, 2019.

Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 15 through December 31, 2019.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2019.

Daily Bag Limits: 20 in the aggregate.

General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(u) *Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).*

Ducks, Including Mergansers

Duck Season Dates: Open October 5, 2019, through January 17, 2020.

Scaup Season Dates: Open October 5 through December 30, 2019.

Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, two pintail, three scaup (when open), two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots. The possession limit is three times the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 24 snipe, respectively.

Canada Geese

Season Dates: Open October 5, 2019, through January 17, 2020.

Daily Bag and Possession Limits: 4 and 12, respectively.

White-Fronted Geese

Season Dates: Open October 5, 2019, through January 17, 2020.

Daily Bag and Possession Limits: 10 and 30, respectively.

Light Geese

Season Dates: Open October 5, 2019, through January 17, 2020.

Daily Bag and Possession Limits: 20 and 60, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(v) [Reserved.]

(w) *Spokane Tribe of Indians, Wellpinit, Washington (Tribal Members Only).*

Ducks

Season Dates: Open September 2, 2019, through January 31, 2020.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, three scaup, two canvasback, and two redheads. The daily bag limit on harlequin duck is one per season. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 2, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 4 Canada geese, 10 white-fronted geese, and 20 light geese. The possession limit is twice the daily bag limit.

General Conditions: Tribal members must possess a tribal hunting permit from the Spokane Indian Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(x) [Reserved.]

(y) *Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).*

Common Snipe

Season Dates: Open October 1, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 10 and 20, respectively.

Ducks

Season Dates: Open October 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: 10 ducks, including no more than 7 mallards (only 3 of which may be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. The possession limit is twice the daily bag limit.

Coots

Season Dates: Open October 1, 2019, through January 31, 2020.

Daily Bag and Possession Limits: 25 coots. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open October 1, 2019, through March 10, 2020.

Daily Bag and Possession Limits: 6 Canada geese, 12 white-fronted geese, and 8 snow geese. The possession limit is three times the daily bag limit. The season on brant is closed.

Swan

Season Dates: Open October 1, 2019, through January 31, 2020.

Bag Limit: Two per year.

General Conditions: Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations. The Swan season is by special draw permit only.

(z) *Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only).*

Ceded Territory and Swinomish Reservation

Ducks and Mergansers

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: 20 and 40, respectively.

Canada Geese

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: 10 and 20 geese, respectively.

Brant

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

Coots

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: 25 and 75 coots, respectively.

Mourning Dove

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: 15 and 30 mourning doves, respectively.

Band-Tailed Pigeon

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: Three and six band-tailed pigeons, respectively.

Snipe

Season Dates: Open September 1, 2019, through March 9, 2020.

Daily Bag and Possession Limits: 15 and 30 snipe, respectively.

General Conditions: Shooting hours are from 30 minutes before sunrise until 30 minutes after sunset. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(aa) *The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members Only).*

Ducks and Mergansers

Season Dates: Open September 1, 2019, through February 29, 2020.

Daily Bag and Possession Limits: 15 ducks, including no more than 1 pintail and 2 canvasback. Possession limit is twice the daily bag limit.

Sea Ducks

Season Dates: Open September 1, 2019, through February 29, 2020.

Daily Bag and Possession Limits: 15 sea ducks, including no more than 10 harlequin. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2019, through February 29, 2020.

Daily Bag and Possession Limits: 15 geese, including no more than 10 cackling Canada geese or 10 dusky Canada geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, 2019, through February 29, 2020.

Daily Bag and Possession Limits: Five and ten brant, respectively.

Coots

Season Dates: Open September 1, 2019, through February 29, 2020.

Daily Bag and Possession Limits: 25 and 25 coots, respectively.

Snipe

Season Dates: Open September 1, 2019, through February 29, 2020.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: All tribal hunters must have a valid Tribal identification card on his or her person while hunting. All nontribal hunters must obtain and possess while hunting a valid Tulalip Tribe hunting permit and be accompanied by a Tulalip Tribal member. Shooting hours are one-half hour before sunrise to sunset, and steel or federally approved nontoxic shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(bb) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1 through December 31, 2019.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Ducks

Season Dates: Open October 1, 2019, through February 29, 2020.

Daily Bag and Possession Limits: 15 and 20, respectively.

Coots

Season Dates: Open October 1, 2019, through February 15, 2020.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 1, 2019, through February 28, 2020.

Daily Bag and Possession Limits: 7 and 10 geese, respectively.

Brant

Season Dates: Open November 1 through 10, 2019.

Daily Bag and Possession Limits: Two and two, respectively.

General Conditions: Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

(cc) [Reserved.]

(dd) *White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 7 through December 15, 2019.

Daily Bag Limit: 10 ducks, including no more than 2 female mallards, 2 pintail, and 2 canvasback.

Mergansers

Season Dates: Open September 7 through December 15, 2019.

Daily Bag Limit: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1 through December 15, 2019.

Daily Bag Limit: 10 geese through September 20, and 5 thereafter.

Coots

Season Dates: Open September 1 through November 30, 2019.

Daily Bag Limit: 20 coots.

Snipe

Season Dates: Open September 1 through November 30, 2019.

Daily Bag Limit: 10 snipe.

Mourning Dove

Season Dates: Open September 1 through November 30, 2019.

Daily Bag Limit: 25 mourning doves.

Woodcock

Season Dates: Open September 1 through November 30, 2019.

Daily Bag Limit: 10 woodcock.

Rail

Season Dates: Open September 1 through November 30, 2019.

Daily Bag Limit: 25 rail.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(ee) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)*

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1 through 15, 2019.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1 through 15, 2019.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks and Mergansers

Season Dates: Open October 19, 2019, through January 26, 2020.

Scaup

Season Dates: Open November 6, 2019, through January 26, 2020.

Daily Bag Limits: Seven, including no more than two redheads, one pintail, three scaup (when open), seven mallards (including no more than two hen mallards), and two canvasback. *Possession Limits:* Twice the daily bag limit.

Coots

Season Dates: Open October 19, 2019, through January 26, 2020.

Daily Bag and Possession Limits: 25 and 50, respectively.

Canada Geese

Season Dates: Open October 19, 2019, through January 26, 2020.

Daily Bag and Possession Limits: Three and six Canada geese, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

Dated: August 13, 2019.

Rob Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–18356 Filed 8–26–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

[Docket No. FWS–HQ–WSR–2017–0002; 91400–5110–POLI–7B; 91400–9410–POLI–7B]

RIN 1018–BA33

Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are issuing final regulations governing the Wildlife Restoration and Sport Fish Restoration financial assistance programs that include the Enhanced Hunter Education and Safety program and the Basic Hunter Education and Safety, Recreational Boating Access, Aquatic Resource Education, and Outreach and Communications subprograms. This final rule reflects targeted changes to the existing rule and is not a complete update. We proposed changes December 15, 2017, based on changes to law, regulation, policy, and practice since the last rulemaking in 2011. This final rule adds and updates definitions and eligible activities under these programs; simplifies requirements for license certification, especially for multiyear licenses; updates authorities; and clarifies how a grantee may use program income under an award. We reviewed all comments received during the comment period and made changes where necessary based on concerns and recommendations. We do not include all proposed changes in the final rule and will continue to work with partners to address those items in future policy or rulemaking.

DATES: The final rule is effective on September 26, 2019.

ADDRESSES: Comments received on the proposed rule may be viewed at *www.regulations.gov* in Docket No. FWS–HQ–WSR–2017–0002.

FOR FURTHER INFORMATION CONTACT: Lisa Van Alstyne, Wildlife and Sport Fish Restoration Program, Branch of Policy, U.S. Fish and Wildlife Service, 703–358–1942.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2017, we published in the **Federal Register** (82 FR 59564) a proposal to revise 50 CFR part 80, ''Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety.'' The proposal provided a background for the Department of the Interior's (DOI) U.S. Fish and Wildlife Service (Service) management of financial assistance programs by the Service's Wildlife and Sport Fish Restoration Program (WSFR). The final rule revises title 50, part 80, of the Code of Federal Regulations (CFR). In addition to addressing topics that we identified since the 2011 rulemaking, the final rule includes revisions made to reflect the following laws and policies:

(a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200, December 26, 2013.

(b) Service Manual chapter 518 FW 1, ''Authorities and Responsibilities,'' July 25, 2014.

(c) Service Manual chapter 519 FW 2, ''Compliance Requirements Summary,'' October 29, 2014.

(d) Service Manual chapter 417 FW 1, ''Service-Administered Audits of Grantees,'' April 26, 2015.

Updates to the Regulations

This final rule is not a full update to the regulations. As described in the preamble to the proposed rule, we worked with our State partners to develop a phased approach whereby we would address a limited number of updates over multiple rulemakings, allowing our partners and the public to better engage and respond to changes. This final rule was started as the initial phase of an expected four-phase process. We have since determined that we are not able to accommodate the required process and timing needed to make the phased approach work. We will work with our partners to develop a new approach for the remaining regulatory updates, to include engagement opportunities during the prerulemaking stage.

The final rule is divided into subparts of related subject matter. This final rule only changes one full subpart, that on license certification. Other updates are at various locations within the rule.

Response to Public Comments

We solicited public comments to the proposed rule published December 15, 2017, for 60 days, ending on February 13, 2018. State fish and wildlife agencies are the primary recipients of grants affected by this rule. We received 37 comments in response to the proposed rule from 15 States, several fish and wildlife-related organizations, and the public.

In addition to proposed changes to the rule, in the preamble to the proposed rule we requested feedback on topics that we will consider for future rulemaking. This discussion starts at 82 FR 59566 in the proposed rule. We consider these topics to potentially elicit a variety of responses and offer this as an opportunity to start a national conversation. We will not respond to any comments received from the topics in the preamble, as they are not part of the rule. However, we appreciate all those who took the time to give thoughtful comments and will be using those comments when addressing these topics in the future. They help inform us of needs, opinions, perceptions, and priorities in these programs that are integral to nationwide fish and wildlife conservation and recreation activities.

The following paragraphs discuss the substantive comments received and provide our responses to those comments. The comments are not presented verbatim and where several commenters responded with similar thoughts, we have summarized them as a single comment.

We received 23 general comments from the public. Several commenters expressed support to the changes in general, even when they made suggestions to specific sections of the rule. Some we consider nonsubstantive. This does not mean that the comments provided are not important, but rather that they do not address what is proposed in this rulemaking. We do, however, address some comments that, although they do not relate directly to the content of this rulemaking, do relate to WSFR and State fish and wildlife agency work.

General

Comment 1: One commenter cited information on the National Dam Safety Act and the importance of partnerships that ensure dam safety.

Response 1: The National Dam Safety Program Act provides funding to States and other agencies with grants administered by the Federal Emergency Management Agency. Policies for administration of those programs are at *https://damsafety.org/ManualsAndGuidelines.* Dams are real property and, according to our regulations, are titled with the State fish and wildlife agency when purchased through the Wildlife Restoration

Program or Sport Fish Restoration Program. Therefore, compliance with State or any applicable Federal laws for dams acquired or built with these funds is the responsibility of the title-holding State agency.

Comment 2: The Wildlife and Sport Fish Restoration Program still bears the name of those Congressmen who crafted the legislation all those years ago. Why is this? The implementing regulations belong to the taxpayer and should not serve as a monument to originating Congressmen.

Response 2: It has been typical throughout Congressional history to name a piece of legislation after the sponsors who championed the action or someone else who inspired the purpose of the legislation. This unofficial naming process is usually done in relation to the specific purpose that the Act supports and is not associated with other aspects of the sponsor's life. Although the original Act does not cite it as the Pittman-Robertson Wildlife Restoration Act, a major piece of legislation since then, Public Law 106–408 Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, does cite both Acts using the sponsors' names. We have no control over how Congress gives titles to Acts. However, we do appreciate and understand your concern.

Comment 3: The public isn't sufficiently engaged in the work and decisions of the State fish and wildlife agency in the commenter's State.

Response 3: We have no control over the State regulatory process nor do we control the administrative processes of the State fish and wildlife agency. We recommend contacting State officials, sharing your concerns, and seeking the various methods that your State offers for engaging in decisionmaking.

Comment 4: Commenters expressed concerns with timber harvesting, the lumber industry, forestry management, and related economic, social issues, and property concerns and, similarly, concerns surrounding endangered species.

Response 4: Although some State fish and wildlife agencies engage in forestry activities as part of wildlife management, neither this rule nor this agency addresses actions relevant to those concerns. The U.S. Forest Service (*https://www.fs.fed.us/*), under the Department of Agriculture, would be the best contact for information on national forest management. The Service does manage endangered species laws and grant funding, but this rule does not cover those activities directly. For more information on Federal financial assistance for endangered species, visit: *https://www.fws.gov/endangered/grants/index.html.*

Comment 5: The Service should use funds under the Wildlife Restoration Act for management of all species of wildlife. The Act was written for species that are imperiled and not just for those that are hunted.

Response 5: The original Act authorized cooperation with State fish and wildlife agencies for ''wildlife restoration projects'' that were defined as ''the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about such projects.'' State fish and wildlife agencies may use their Wildlife Restoration funds for species under their control that meet the definition of ''wildlife'' at 50 CFR 80.2. This definition limits eligible species to birds and mammals. Some States have asked that we expand the definition to include species that are hunted in that State, but are not birds or mammals, as these species often need a management plan and those who purchase licenses to hunt those species contribute financially when they purchase a license. The topic of defining wildlife will continue to be considered, and we appreciate this public input.

Comment 6: The regulations don't even really mention Comprehensive Management System grants, but they are a big part of the original legislation. This method seems much more efficient. Are there plans to revisit this issue in a future rulemaking?

Response 6: The original Act (50 Stat. 917, Sept. 2, 1937) does not include Comprehensive Management Plans, but uses the word ''plans.'' We agree that the Comprehensive Management System for managing financial assistance is a method that more States could employ to administer these programs efficiently and would include periodically seeking public input. We intend to expand this information in a future rulemaking.

Comment 7: The minimum dollar amount for certifying licenses is meaningless at $2. It doesn't reflect market reality. Aren't data available that would allow you to determine an appropriate annual price and standardize a market-based amount?

Response 7: The rules that govern financial assistance (2 CFR part 200) clarify that market value is determined on a very local level. Comparing the cost of similar licenses in different States shows that there is no national consistency, but rather each State sets prices based on the needs and desires of their State fish and wildlife agency and the public. The standard in this final rule was recommended not based on market value of a license, but rather the desire to cover administrative costs of issuing a license and having some license revenue left to the State agency. The intent is simplicity, clarity, and fairness. This standardized method accommodates all States, regardless of the State laws that govern license fees.

Comment 8: A commenter questions the Service's compliance with the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Response 8: We address both of these requirements in the ''Required Determinations'' section of the preamble at 82 FR 59568, Dec. 15, 2017. Under the RFA we are required to review and consider how this rule, which governs the administration of these financial assistance programs, economically affects small entities. Under the SBREFA we assess whether the rule will have a significant economic impact on a substantial number of small entities of $100 million or more; cause a major increase in costs or prices; or have significant adverse effects on competition, employment, investment, productivity, or innovation. As the WSFR programs and subprograms transfer money primarily to State fish and wildlife agencies, and the transfer of funds is a benefit to smaller entities that partner with the State agencies, there is no adverse effect to small entities under this rule. It is possible that some Federally funded projects, when complying with other Federal, State, or local laws, could affect small entities, but those instances are outside the purview of this rule.

Comment 9: The Humane Society of the United States emphasizes the importance of engaging with nongovernmental organizations when developing regulations.

Response 9: Executive Order (E.O.) 13563 (Jan. 18, 2011) directs Federal agencies to adopt regulations through a process that involves public participation, including, among other provisions, offering a comment period of at least 60 days.

WSFR is fully compliant with E.O. 13563. Any entities wishing to engage in

future prerulemaking opportunities may do so by notifying us using information at **FOR FURTHER INFORMATION CONTACT.**

Comment 10: This proposed rule contains unanticipated changes.

Response 10: Following feedback from States that addressing the large amount of changes to 50 CFR part 80 in one rulemaking was too burdensome, in April 2016 Service staff approached the Federal/State Joint Task Force on Federal Assistance Policy (JTF) and the Federal Aid Coordinators Working Group (FACWG) with a concept to approach updates using a phased approach. This approach would allow fewer topics per rulemaking and the ability to manage the workload over 18–24 months. The process was agreed to, and the FACWG and Regions nominated members to a Federal/State team that developed a schedule to include timing and suggested topics for each phase. The schedule was shared in September 2016 without objection, but was delayed by a few months as the topic of license certification, which was scheduled to be published as a separate rulemaking, was close to being ready to go into a proposed rule. We worked with the JTF and the Association of Fish & Wildlife Agencies (AFWA) to finalize the concepts of license certification changes and added the revised subpart to the proposed rule already developed as Phase 1. Unfortunately, the proposed rule was administratively delayed, and we were unable to maintain the recommended phased schedule for rulemaking. During the delay, much communication focused on license certification and did not reiterate all proposed changes. We will engage our partners more effectively in the future when preparing for further rulemaking.

Subpart A—General

Section 80.2 What terms do I need to know?

(1) *Asset*—New definition.

Comment 11: It is unnecessary to define ''Asset'' as it is already defined at 2 CFR 200.12.

Response 11: The definition at 2 CFR 200.12 is for a ''capital asset,'' which is a subset of the term ''asset.'' However, we agree that we should reference back to 2 CFR part 200 and align for ease of grant administration. We added to this definition the reference for capital asset, as it defines criteria for a capital asset. We also added the reference for equipment at 2 CFR 200.33, as it defines criteria for equipment as an asset. We also clarify that real property of any value is an asset.

Comment 12: This expansive definition could cause States considerable challenges related to control of assets. Section 80.90(f) requires States to maintain control of all assets acquired under the grant to ensure they serve the purpose for which acquired throughout their useful life. However, a useful life is only determined for those items meeting the threshold of equipment or capital improvement. This new definition opens the door for audit findings over very minor items. Another commenter is concerned this definition is overly broad and vague and asks if there is a threshold for monetary value.

Response 12: Response 11 explains that some assets that are defined under 2 CFR part 200 have criteria that contain certain thresholds. We define the term ''asset'' to clarify that it can mean: (1) Either tangible (physical in nature) or intangible (not physical in nature, such as software, licenses to operate, copyrights, or usage rights), (2) Real or personal property, and (3) Must have a monetary value.

This definition is applied in § 80.90(f) where an agency is required to have ''Control of all assets acquired under the grant to ensure that they serve the purpose for which acquired throughout their useful life.'' In § 80.2 we define useful life as ''the period during which a federally funded capital improvement is capable of fulfilling its intended purpose with adequate routine maintenance.'' We further define capital improvement as amended ''(i) A structure that costs at least $25,000 to build or install; or (ii) The alteration or repair of a structure, or the replacement of a structural component, if it increases the structure's useful life by at least 10 years or its market value by at least $25,000.'' So, when applying the term ''asset'' under 50 CFR 80.90(f), it relates to capital improvements and not minor items.

(2) *Capital improvement*—Updated definition. We received nine comments concerning the definition; four expressed support.

Comment 13: A commenter recommends an even higher threshold of $50,000.

Response 13: We have no basis to increase the threshold to $50,000. The $25,000 threshold is based on the limits on real property appraisals at 49 CFR 24.102(c) and other sources. We increased the threshold from $10,000 to $25,000 in the Boating Infrastructure Grant Program rule (80 FR 26150, May 6, 2015) and intend to apply the increased threshold to all WSFR-administered programs.

Comment 14: The paragraph in the 2011 rule that allows States to set their own definition for capital improvement was removed in the proposed rule and should be included in the final rule.

Response 14: We agree. This was an omission on our part, and we have added the paragraph back to the definition.

(3) *Geographic location*—New definition.

Comment 15: We received multiple comments on this proposed definition. Some suggest that it doesn't allow for ''Statewide,'' regional areas, or multiple counties to be chosen, hampering the scope of projects where it is applicable. Others suggest that limiting reference to U.S. Geological Survey quadrangles doesn't allow for other identifiers and possible new technology for identifying location. Others were concerned that the language used (Ex: parcel) implies this is only for real property work.

Response 15: We agree with some of the suggestions and considered making changes in the final rule to reflect concerns. However, due to the wide variety of comments received and the connection to upcoming work for performance reporting, we decided to delay addressing this definition for future rulemaking consideration.

(4) *Match*—Updated definition.

Comment 16: Match is already defined in 2 CFR 200.29 and should be removed.

Response 16: We disagree that the definition should be removed from this rule, but agree that it should better align with the 2 CFR part 200 definition. We make changes based on this comment.

Comment 17: All definitions for match are confusing and make it appear that match must be only in-kind.

Response 17: To improve clarity, we make changes that clearly distinguish that cash and in-kind may both be used for match.

Comment 18: Commenters had concerns with the definition including a threshold for useful life as well. How should we respond to an improvement on a structure that originally didn't meet the $25,000 threshold, but has its useful life extended by at least 10 years? It does not seem logical that increasing its useful life by any number of years would make it become a capital improvement.

Response 18: At 2 CFR 200.12, capital assets are defined as tangible or intangible assets used in operations having a useful life of more than 1 year which are capitalized in accordance with generally accepted accounting principles. Capital assets include land, buildings (facilities), equipment, and intellectual property as well as additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or

alterations to capital assets that materially increase their value or useful life. So, regardless of the cost, if it has a useful life of greater than 1 year and is capitalized as an asset, it is a capital asset. The regulations at 2 CFR 200.13 state that a capital expenditure for improvement to land and buildings includes both increase in material value and increase in useful life. The regulations at 2 CFR part 200 do not specify what those limits are, but we set reasonable thresholds in this rule—material value being $25,000 and increase in useful life being 10 years. So, yes, it is possible for an asset that did not originally cost $25,000 or more and was therefore not a capital improvement, to be improved to extend the useful life by 10 or more years and it would then be a capital improvement.

Comment 19: A commenter suggested that ''or its market value by at least $25,000'' be removed from the proposed definition. Market value is not needed if capital improvement is largely dependent on expenditure threshold.

Response 19: We disagree. As stated in Response 18, the regulations at 2 CFR part 200 are vague on thresholds, but we set thresholds in this rule. The regulations in 2 CFR part 200 call for both material value and useful life, so it is appropriate to include market value at the higher $25,000 threshold.

(5) *Obligation*—New definition. One comment was received supporting this definition. We make no changes from the proposed rule.

(6) *Real property*—Updated definition.

Comment 20: Clarify the use of ''some'' in the sentence that states, ''Examples of real property include fee, and some leasehold interests, conservation easements, and mineral rights.''

Response 20: We agree that a better explanation would be beneficial, and we replaced the second sentence with the following: ''Examples of real property include fee, conservation easements, access easements, utility easements, and mineral rights. A leasehold interest is also real property except in those States where the State Attorney General provides an official opinion that determines a lease is personal property under State law.'' In order for lease to be considered personal property, the Solicitor's Office of the Department of the Interior must be able to concur with this opinion.

Comment 21: A commenter objected to the change in language from ''the air space above the parcel, the ground below it,'' to ''the space above and below it.''

Response 21: The grammatical change clarifies the sentence and restates the definition to reflect the traditional legal real property definition. We make no change based on this comment.

Comment 22: Define the terms lease, license, and permit to make the definition of ''real property'' more understandable.

Response 22: The term ''lease'' is defined at § 80.2 under the term ''Lease,'' the term ''license'' is defined at § 80.2 under the term ''Personal Property'' in paragraph (2)(iii). The term ''permit'' is defined on the Service's website for permits that the Service issues and is explained as, ''Permits enable the public to engage in legitimate wildlife-related activities that would otherwise be prohibited by law. Service permit programs ensure that such activities are carried out in a manner that safeguards wildlife. Additionally, some permits promote conservation efforts by authorizing scientific research, generating data, or allowing wildlife management and rehabilitation activities to go forward.'' (*https://www.fws.gov/permits/index.html*) We suggest a definition that is broader, as it would be applied by multiple non-Service entities: ''A permit is a written authorization that allows a specific person, agency, or other entity to do something that is not forbidden by law, but is not allowed without the permit. The purpose of permits is usually to help ensure that the permittee is aware of and complies with certain laws, regulations, and conditions. Other purposes may be to raise revenue or prevent overuse of an area or a resource. The term is most often applied to an authorization issued by a governmental entity.'' We will consider adding a definition in a future rulemaking.

(7) *Structure*—New definition.

Comment 23: Commenters found this definition either unnecessary or confusing.

Response 23: Due to the negative comments received and no pressing need for this definition, we decided to delay addressing this definition for future rulemaking consideration.

(8) *Technical Assistance*—New definition. Several commenters support this definition as being helpful in differentiating technical assistance from management assistance.

Comment 24: Commenters recommend the term be ''technical guidance'' instead of ''technical assistance.'' Several commenters expressed concerns that the definition is limited by targeting technical assistance to members of the public and on private lands. These commenters indicate that the definition needs to be expanded.

Response 24: A small team working on a policy topic developed this definition for technical assistance, but it is clear from comments received that we should review it with other partners before putting it in regulation. A larger review will ensure it meets the needs and expectations of grantees. We will delay including it in regulation for future rulemaking consideration, but will still include technical assistance as a new, eligible activity under 50 CFR 80.50 and 80.51. We believe that most grantees understand that technical assistance does not include actual on-the-ground management activities and will continue that approach.

Subpart D—License Holder Certification

Comment 25: Commenters strongly supported this subpart. Several commenters stated that they believe the changes will clarify and simplify the process; that even if certain license types are limited short term, the benefits outweigh this over the long term; and that the new standards are reasonable and attainable.

Response 25: We appreciate the support and the work done within a Federal/State partnership to achieve consensus on this change.

Section 80.30 Why must an agency certify the number of paid license holders?

We made no proposed changes to this section and received no comments. No change.

Section 80.31 How does an agency certify the number of paid license holders?

We made no proposed changes to this section and received no comments. No change.

Section 80.32 What is the certification period?

We made no proposed changes to this section and received no comments. No change.

Section 80.33 How does an agency decide who to count as paid license holders in the annual certification?

Comment 26: The language in this section was changed to say that a license holder is to be counted in the certification period in which the license is ''sold'' instead of when ''first valid.'' The ''sold'' language was problematic in the past and corrected in the 2011 rulemaking. Changing back to the old language brings the problems back. It is possible for individuals to purchase one annual license during the certification period and the next license ahead of time, but also in the same certification

period. Therefore, it is imperative to use language that reflects the period for which the license is valid.

Response 26: We agree and make the change.

Comment 27: We accept the concept of license holders voluntarily purchasing a license, even if they do not participate in the activity. However, we do not agree with individuals being ''forced'' to purchase a license for an activity that they do not want, but that they must do in order to obtain the license that they want.

Response 27: The commenter is referring to States that do not offer individual options for all license types and combine privileges under one license purchase, even if the license holder does not want and/or need the second privilege. We have no control over this process, as these are State decisions, and we will not restrict a State's ability to issue licenses that require a license that gives the license holder more than one privilege, even if the additional privilege is unwanted or unneeded. As long as the license holder meets the requirements of this rule, they may be certified in the license certification period for each valid privilege.

Comment 28: We disagree with allowing States to sell only combination hunting and fishing licenses and not offer them individually. Is it the intent of the rule to allow this and to then allow those States to count each license sold as both a hunting license holder and a fishing license holder?

Response 28: It is the intent of the rule to make it clear that a State may only count an individual once during a certification period as either a hunting license holder or a fishing license holder. For example, if a State sells an individual both a small game license and a big game license, they are only counted once. However, if a State sells a combination hunting and fishing license, they may count them once as a hunter and once as an angler. This is true whether the individual chooses to purchase a combination license, or whether it is the only option offered by the State. It is not the intent of the rule to tell States whether or not they can require a license holder to purchase a combination hunting and fishing license without an option to purchase each individually.

Section 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?

Comment 29: Commenters expressed support for the new standard, but some concerns over the date when the standard would be required.

Response 29: We agree that the effective date needs to be changed and we did so. We make changes to encourage a State to adopt the new standard as soon as possible, but also to allow a State 2 years from the effective date of the rule to adopt the new standard. This will allow States that need to revise legal requirements, policies, or documents sufficient time to do so.

Comment 30: Under the new standard our State would have more than 375,000 license holders we would not be able to count, resulting in a loss of millions of dollars in apportionments.

Response 30: After consulting with AFWA, an organization that represents all States and State Directors, they agree that giving States 2 years to make changes to bring licenses up to the minimum standard is fair and sufficient. The minimum standard of $2/year/privilege or $4/year for combination licenses is very low and should be able to be attained by States in order to count most licenses. If a State chooses to offer free licenses to certain groups, that is the State's choice and they will do so knowing that these license holders cannot be counted. However, we wish to point out that, in 50 CFR 80.20, ''What does revenue from hunting and fishing licenses include?'', hunting and fishing revenue includes not only licenses, but also State-issued permits, stamps, and tags. So, if, for example, a State offers a free hunting license to veterans and that is all they have, they cannot be counted. However, if they were to purchase a permit, stamp, or tag for $2 or more, then they can be counted as they have met the minimum standard to be counted as a hunting license holder.

Comment 31: Question about a license that sells for $2.90, but $1.00 of that goes to the issuing agent and is taken by the agent prior to depositing in the agency account: Would these licenses meet the standard?

Response 31: Yes, they would meet the standard. The $2 amount for the standard is based on research a committee authorized by AFWA conducted on the average costs to issue a license and have some income received by the State fish and wildlife agency. This research was used as the basis for determining a fair and acceptable minimum amount. It is understood that the ratio of costs associated with issuing a license vs. the amount of license revenue received varies depending on license types and States. It is important to remember that we are no longer applying the term ''net revenue.'' In the scenario described in the comment, the State fish and wildlife agency receives $2.90 and has made arrangements to pay the issuing agent in the manner described. On the State's website, they list the price of the license as $2.90. How the State manages the accounting and payment for services to issue the license, whether they deposit to an agency account and pay the issuing agent, or have the agent take it off the top, is an accounting process/preference and does not affect the gross amount of the license. Therefore, we consider that the State fish and wildlife agency under these circumstances has met the new standard.

Section 80.35 What additional requirements apply to certifying multiyear licenses?

In addition to addressing comments from the public for this section, we further reviewed the section and change the final paragraph (§ 80.35(g) in the final rule) to delete the requirement for States to obtain the Director's approval of its proposed technique to decide how many multiyear license holders remain alive in the certification period. A State fish and wildlife agency must use and document a reasonable technique, but does not need Director's approval.

We removed § 80.35(b) as explained in Response 34. As a result, we redesignate paragraphs (c) through (i) as paragraphs (b) through (h). At the newly designated § 80.35(b)(1) and (2), we inform States how to address converting multiyear licenses sold under the final rule that was effective August 31, 2011, to the new standard. At § 80.35(b)(1), we address those States that have invested the revenue collected for the license and held the funds as principle in the investment, not spending any of the amount collected. In this scenario, they have met the prior net revenue requirement through dividends from the investment and not from the revenue collected. Therefore, they may apply the entire amount of the revenue collected using the new standard from the effective date of this final rule forward. At § 80.35(b)(2), we address those States that have invested the revenue collected for the license and that revenue has been spent, in part or in full. In this scenario, they must use the formula described to deduct the amount that would have been accounted for under the new standard from the time the license was sold until the time the State adopts the new standard. This is primarily for multiyear licenses that were sold under the rule effective August 31, 2011, due to the additional qualifications for net revenue, but may be applied to any multiyear licenses sold under 50 CFR part 80 regulations

that required net revenue and that are managed under an investment strategy to meet those net revenue requirements.

Comment 32: A commenter supports allowing 80 years as a default for determining life expectancy for multiyear licenses.

Response 32: We hope that allowing this additional option will help some States to reduce burdens for tracking multiyear licenses.

Comment 33: There is a math error in the example given.

Response 33: We agree and correct the error.

Comment 34: Adjust § 80.35(b) to allow States to start counting a valid multiyear license that meets the new standard, even if it was not able to be counted in the annual license certification the year before this final rule is effective. This would be a reasonable and appropriate way to address the drastic inconsistency in the 2011 rule from the previous rule and the fairer, consistent standards now being presented.

Response 34: We reviewed prior versions of 50 CFR part 80 regarding multiyear licenses and found the following information:

In 1982: 50 CFR 80.10(c)(2) states, ''Licenses which do not return net revenue to the State shall not be included. To qualify as a paid license, the fee must produce revenue for the State. Net revenue is any amount returned to the State after deducting agent or sellers fees and the cost for printing, distribution, control or other costs directly associated with the issuance of each license. (3) Licenses valid for more than one year, either a specific or indeterminate number of years, may be counted in each of the years for which they are valid; provided that: (i) The net revenue from each license is commensurate with the period for which hunting or fishing privileges are granted.''

In 2008: 50 CFR 80.10(b)(4) states, ''The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal, whether it is legal for a specific or indeterminate number of years, only if: (i) The net revenue from the license is in close approximation with the number of years in which the license is legal.''

In 2011: 50 CFR 80.35(b) states, ''The agency must receive net revenue from a multiyear license that is in close approximation to the net revenue received for a single-year license providing similar privileges.''

This history shows the change in the 2011 version that expanded beyond value per year to comparing the annual revenue of a multiyear license with the cost of a comparable annual license. We agree that this shift added a layer of complexity that we are resolving in this rulemaking. We also understand that including the language in the proposed rule at § 80.35(b) penalizes those multiyear licenses that were adversely affected by the 2011 change. In order to truly simplify license certification and allow for future consistency for all States' multiyear licenses, we agree with the commenter and remove this paragraph in the final rule.

Comment 35: Some States may believe that under § 80.35(b) they are required to continue to carry forward some of the burdensome requirements for multiyear licenses needed to comply with current or past versions of the regulations.

Response 35: We agree that it should be clear that State fish and wildlife agencies may stop using past methods for accounting for multiyear licenses that may be burdensome and complicated. We allow at § 80.35(a) that State agencies must begin following the new standard for multiyear licenses sold before and after the effective date of this final rule, and at § 80.35(c) we describe how to assign value to multiyear licenses sold before adopting the new standard. The only exception would be if a State identifies financial or operational harm and follows the exception at § 80.35(c). We agree that § 80.35(b) led to confusion on this point and have removed it from the rule, redesignating the paragraphs accordingly.

Comment 36: Has the Service considered whether, if a combination license does not meet the standard of $4 for a combination license, it may be counted at all? For instance, what if the cost of a combination license is $3?

Response 36: Yes, the Service has considered this issue. As the privilege to hunt and the privilege to fish would both be included in the license, a State fish and wildlife agency that does not meet the minimum standard for a combination license may choose to certify those licenses as either hunting licenses only, fishing licenses only, or a combination of hunting only and fishing only as long as the numbers do not exceed total licenses sold and meet all other regulatory requirements. For example, if a State sold 1,000 combination licenses for $3 each, it could certify 1,000 as hunting licenses only; or it could certify 1,000 as fishing licenses only; or it could certify 500 as hunting licenses only and 500 as fishing licenses only.

Comment 37: Many States are using multiyear licenses as a tool in efforts to recruit, retain, and reactivate hunters and anglers. The language at § 80.35(b) does not support these efforts, and sportsmen and sportswomen would be discouraged to discover that their State is unable to count them as valid license holders in annual certifications due to the restrictive nature of the rule issued in August 2011.

Response 37: We agree and have removed this paragraph as described in Response 34.

Section 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?

Comment 38: We advocate that under these circumstances the State must show how much the purchaser is paying for each privilege. That way, it is clear that neither privilege is being offered ''free.'' Some States may force an additional privilege where the result is the ability to count an additional license holder for which it has not received additional funds. For instance, a big game license is offered for $100, and a big game/fishing license is also being offered for $100. We believe that the opportunity to purchase both licenses separately must exist at a higher price to show it is truly a discount.

Response 38: See Response 28. How a State determines to sell their hunting and fishing licenses is a State decision. As long as they meet the standard at § 80.34, they may count the licenses accordingly.

Section 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license, or offer a free license, under any circumstances?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.39 What must an agency do if it becomes aware of errors in its certified license data?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.40 May the Service recalculate an apportionment if an agency submits revised data?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.41 May the Director correct a Service error in apportioning funds?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

Comment 39: A commenter objected to adding ''acquire equipment'' as an additional activity and the associated requirements to consider lease vs. purchase. Section 80.50(a)(6) already allows acquiring equipment, so this provision seems redundant. Also, acquiring equipment is not an activity, but a tool to implement activities. Consider 2 CFR 200.313, 200.439, and 200.318 and the correlation with the addition of lease vs. purchase consideration in the rule.

Response 39: We agree that having equipment listed in two different paragraphs in this section is redundant and unclear. We therefore strike the addition of the proposed § 80.50(a)(14) and add under § 80.50(a)(6) a new paragraph (iii) that directs grantees to refer to 2 CFR part 200 when making decisions for equipment, goods, and services. The regulations at 2 CFR 200.313(a)(1) refer to conditions of title once equipment is acquired, but supports the need for equipment to serve an authorized purpose. Sections 200.313(a)(2) and 200.439(b)(1) and (2) clarify that acquiring equipment requires prior written approval from the awarding agency. Section 200.318(d) clearly states for non-State entities, ''The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.'' In addition, § 200.301 requires that non-Federal entities must relate financial data to performance accomplishments of the Federal award and demonstrate cost-effective practices. Section 200.404 discusses reasonable costs. It is expected that this requirement of the grant proposal would address lease vs. purchase, as well as other cost elements. Section 200.405 discusses allocable costs and how to manage acquired equipment and other costs if they would support multiple purposes.

We would expect that a lease vs. purchase analysis would primarily be needed for short-term equipment needs. Specialty equipment, where lease is not an option, and equipment for long-term use may be justifiable. We believe most grantees already consider these and other options when acquiring equipment and include this as part of their standard procurement processes, so there will be very few adjustments needed. We therefore leave this specific direction out of the final rule and point to 2 CFR part 200 for guidance.

Comment 40: Use the term ''Provide'' for technical assistance instead of ''Give.''

Response 40: We did not use the term ''provide'' in the proposed rule as that term is considered bureaucratic and not plain language. However, because a few commenters recommended this change, we have done so in this final rule and will consider in a future rulemaking if another word might be substituted. We agree that the most important thing to consider is making rules clear and understandable.

Comment 41: We received several comments supporting adding payments in lieu of taxes (PILT) as eligible, and others that question including it.

Response 41: Before April 17, 2009, payments in lieu of taxes were considered allowable only in proportion to the amount contributed by a WSFR award to the total cost of acquisition. This policy was stated in Federal Aid Policy memorandum 84–3, dated Dec.12, 1983, which no longer has any official status as policy. The WSFR Policy Branch reinterpreted this issue on April 17, 2009, in response to a State's challenge of an audit finding that payments in lieu of taxes are unallowable if the lands in question had not been acquired under a Federal award. This reinterpretation is consistent with the revision of 50 CFR part 80 in August 2011 and the implementation of 2 CFR part 200 on Dec. 26, 2014, and also emphasizes that PILT is eligible only if the PILT requirements are applied uniformly across all State land management agencies, and only for that portion of PILT not paid by other sources of revenue. This approach protects State fish and wildlife agencies and WSFR funding from unfair costs. We can also reference Corrective Action Plan for the Inspector General's audit report 2003–36, E–0007 2001–2003 for the period July 99–Oct 01, and the white paper on PILT revised in April 2015. In some States these payments are required by law, and this provision clarifies that these payments may be made using WSFR funds without conflict. States are not required to make payments in lieu of taxes when there is no legal obligation to do so. We are moving this policy that has been in effect for 9 years into regulation. Supporting information is posted on the FA Wiki at: *https://fawiki.fws.gov/display/WSFR/Payment+in+Lieu+of+Taxes+%28PILT+or+PILOT%29+-+WSFR.*

Comment 42: Use the term ''acquire'' instead of ''buy'' when referring to equipment and real property.

Response 42: We agree and make applicable changes in the final rule.

Comment 43: Include ''acquire real property for firearm and archery ranges'' under both Basic Hunter Education and Enhanced Hunter Education programs.

Response 43: We agree and make the change.

Comment 44: Some of the items listed in this section are activities and others are items that support activities. Perhaps more thought can be given on how to present this information.

Response 44: We appreciate this comment and will thoughtfully consider how we present this information as part of a future rulemaking.

Section 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

The additional eligible items we proposed at § 80.51 that apply to the Sport Fish Restoration Program are the same additions as we proposed at § 80.50 for the Wildlife Restoration Program, except for Hunter Education. No unique comments were received for this section. We received comments on the addition of equipment and the requirement to consider purchase vs. lease (see Comment and Response 39), which we address similarly by removing proposed § 80.51(a)(14) and adding paragraph (iii) to § 80.51(a)(8). We received comments to change ''Give'' to ''Provide'' at § 80.51(a)(12) (see Comment and Response 40), and we ensured that we use the term ''acquire'' instead of ''buy'' regarding equipment (see Comment and Response 42). We also received comments regarding payment in lieu of taxes (see Comment and Response 41).

Section 80.56 What does it mean for a project to be substantial in character and design?

We discuss comments on the proposed revisions and provide responses below. The decisions we make in addressing these comments

collectively results in no changes from the current regulations.

Comment 45: The sentence at § 80.56(a), ''Projects may have very different components and still be substantial in character and design,'' appears to serve no purpose, or is at least unclear what the purpose is.

Response 45: We have received information that indicates that States have been breaking projects apart and submitting separate grants for different components of a project because of the perception that a project that contained various components—for example, a land acquisition, construction, and operation and maintenance—would not be viewed together as substantial in character and design if all were included in one grant proposal. Adding this sentence was intended to clarify that these projects may be included in one grant proposal, if a State chooses to do so, and still meet the requirement for being substantial in character and design. As this is not a requirement and did not lend the expected clarity, we remove this sentence and will manage administratively. If States have questions they should contact their Regional WSFR Office.

Comment 46: Remove the word ''measurable'' from § 80.56(b)(2): ''States a purpose and sets measurable objectives, both of which you base on the need.'' One commenter stated it is not needed because the word ''quantified'' is used at § 80.82(b)(3) when defining objectives. One commenter questioned if this was intentional and, if so, how a research project would be measured. Other comments stated that not every grant objective can be defined in measurable terms and States should be given flexibility when determining objectives.

Response 46: We disagree that the inclusion of the word ''measurable'' doesn't add value and suggest that it supports the concept of substantial in character and design. This is also supported by the requirements at 2 CFR 200.301, ''Performance measurement,'' that state, ''The recipient's (grantees) performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices.'' Tracking and Reporting Actions for the Conservation of Species (TRACS) is the tracking and reporting system for conservation and related actions funded by the WSFR Program. A Federal/State team called the TRACS Working Group was established in May 2014, in part to set national standards for what information States would enter into TRACS. One of the agreed standards is Specific, Measurable, Achievable, Relevant, and Time Bound (S.M.A.R.T.) objectives. However, we will remove the word ''measurable'' in this section and consider adding all S.M.A.R.T. objective components in a future rulemaking. We will also consider in a future rulemaking if changes should be made at § 80.82(b)(3) or other sections of the rule to better align information and requirements.

Regarding research projects, 2 CFR 200.76, ''Performance goal,'' gives some further guidance for this when stating, ''Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (*e.g.,* discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).'' The regulations at 2 CFR 200.87 define ''research'' as ''a systematic study directed toward fuller scientific knowledge or understanding of the subject studied.'' The regulations at 2 CFR 200.210(d) explain as Federal Award Performance Goals that ''The Federal awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (*e.g.,* discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured.'' Whatever the focus of the award, it is clear that there must be some measurable objective, but that depending on the project there is flexibility in what the measure might be.

Comment 47: The evaluation of cost effectiveness is relative and requires consideration of many variables. This is likely to be arbitrary if determined by WSFR staff. True cost effectiveness should be evaluated by economists, which would be a burden. Moreover, many wildlife-related activities are valued in non-financial ways, making it even more difficult.

Response 47: The requirements at 2 CFR 200.301 include, ''the Federal awarding agency must require the recipient [grantee] to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices.'' We are not requiring that recipients engage economists to determine this measure, but that they consider and address as appropriate for the award. Cost-effectiveness does not necessarily mean using the cheapest option, as the cheapest option might not be the best for a successful project. Cost-effectiveness may consider multiple benefits, including those that are values driven. Cost considerations may also determine that paying more for something because it will improve useful life, management, accessibility, etc., is a good investment. We considered alternative language to explain cost-effectiveness, but believe that States are already addressing this issue when showing costs are necessary and reasonable, which supports a project being substantial in character and design. No changes are made based on this comment.

Section 80.82 What must an agency submit when applying for a project-by-project grant?

Comment 48: We are uncertain as to whether at the proposed § 80.82(c)(10), ''Budget Narrative,'' the schedule of payments for projects that use funds from two or more annual apportionments is meant to apply to the acquisition of capital improvements and equipment, or if it is meant to apply to all projects. It is typical for our State to write 2-year grants for our projects with status of available fund conditions. The exact funding of these projects is never determined until the apportioned funds are available. This has been an efficient method of managing the apportionment, and we would not want to have to in advance determine apportionment allocation among other grants.

Response 48: The content at § 80.82(c)(10) was not changed from the current rule. Rather, this subparagraph was reformatted to pull out the three items under Budget Narrative as (i), (ii), and (iii), instead of a single sentence. We understand that a budget is an estimate and certain projections are made, and that available funds in a future grant period could alter a

multiyear budget. As this section is not changed, there is no requirement to make changes in current, approved procedures.

Comment 49: Why do you propose separating ''Purpose'' and ''Objective?'' If it is related to real property and the purpose for which land is acquired, we recommend addressing this in the real property chapters instead of the rule.

Response 49: We separate purpose and objective to clarify that they are two discrete concepts that have often been addressed as a single concept. This clarifies what information each is intended to convey. The regulations at 2 CFR part 200 demonstrate a preference for using the term ''objective'' in relation to costs, and for using ''goal'' as we use the term ''objective''; however, ''objective'' is used at various locations when discussing project or program objectives. The regulations at § 200.76 state, ''Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate,'' aligning ''goal'' to ''objective'' and not relating it to purpose. In several locations at 2 CFR part 200, performance is measured in relation to whether goals/objectives are achieved, so it is important to clearly define objectives.

Comment 50: A commenter suggests editing § 80.82(c)(9)(iv) to read as follows: ''Indicate whether the agency wants to treat program income that it earns after the grant period as either: (a) License revenue; or (b) additional funding for purposes consistent with the grant terms and conditions or program regulations'' (*i.e.,* adding the phrase ''as either''). This would help eliminate confusion.

Response 50: We agree this language should be clarified and make changes.

Comment 51: At § 80.82(b)(10)(ii), if the State agency's threshold for capital improvement is less than the amount defined at § 80.2, is prior approval required?

Response 51: No. If a capital improvement meets the State agency standard, but is lower than the standard in this rule, prior approval is not required.

Section 80.85 What requirements apply to match?

Comment 52: Clarify the term ''in-kind,'' as it is not consistently understood and often misused.

Response 52: Although we had proposed revisions to § 80.85, we have decided not to change this section in this final rule. Instead, we adjust the definition of ''match'' at § 80.2 to better align with 2 CFR part 200 and to address this concern.

Section 80.97 How may a grantee charge equipment use costs to a WSFR-funded project?

Comment 53: We received several comments in regard to this section:

(1) Clarify that this section refers to State fish and wildlife agency rates for equipment it owns.

(2) Clarify at § 80.97(b) in the second sentence that ''agency'' refers to the State agency.

(3) Using U.S. Army Corps of Engineers rates has proven to be problematic, and we suggest additional resources be devoted to identifying alternative, practical methods.

(4) This section appears to be in conflict with 2 CFR part 200.

(5) State fish and wildlife agencies work with multiple Federal agencies and having different rules for each agency is problematic.

(6) This part of the rule is very restrictive to State fish and wildlife agencies.

(7) Sometimes another State entity outside the fish and wildlife agency is involved in the process, which makes it complicated.

(8) Requiring a State fish and wildlife agency to develop its own rates is an unfair burden.

(9) We question the disparity between State fish and wildlife agencies and subgrantees.

(10) This is the first official specification we have seen requiring a by-agency rate.

(11) It is unclear how a State fish and wildlife agency cannot charge costs of equipment to another grant but can charge operating costs to a future grant.

(12) We do not understand why another State agency cannot establish a rate that we can then use.

(13) We recommend that the Federal agency develop rates for States to use.

Response 53: WSFR first issued guidance on this topic on December 23, 2014, to comply with the requirements at 2 CFR part 200 (see Comment 53, item 10). We received comments from States that indicated it was an extreme burden for subgrantees that are small entities to develop their own rates, so we updated the guidance on October 21, 2016, to allow greater flexibility for subgrantees. The major difference for subgrantees is allowing them to use the State fish and wildlife agency rate, instead of having to determine their own rate. This still meets all the criteria under 2 CFR part 200 (see Comment 53, item 9). Once established, these equipment rates should be accepted by any other Federal programs in which a State fish and wildlife agency may participate, as if done properly they will fully comply with 2 CFR part 200 (see Comment 53, items 5 and 6). It is acceptable for a Statewide administrative agency to set rates, as long as when setting rates for the State fish and wildlife agency they only consider equipment types that are typical for use by the State fish and wildlife agency. A generic Statewide rate would include specialty equipment from other State agencies that could inappropriately proportion costs to the State fish and wildlife agency. In contrast, State fish and wildlife agencies also use specialty equipment that should be appropriately considered when determining rates, so that the agency receives sufficient credit for specialized equipment. A Statewide administrative entity should be fully equipped to perform this type of assessment (see Comment 53, items 7 and 12).

Regarding burden, we clarify here that, once established, rates should be valid for several years and the base analysis would serve to make any future updates easier to accomplish (see Comment 53, item 8). Regarding other, alternate resources for determining rate schedules, according to 2 CFR part 200, rates must reflect local market rates and equipment that agencies use, so a strictly national rate would not comply with 2 CFR part 200. If a State were to identify a rate schedule developed by an organization or entity that it feels might comply with 2 CFR part 200 and be used instead of their self-determined rates, WSFR Headquarters staff will, upon request, review to determine if it complies. However, WSFR does not have the resources to independently set forth on a project to set and update local rates for all States (see Comment 53, items 3 and 13). Comment 53, item 11, seeks clarity on process and comment 53, items 1 and 2, recommend edits. However, due to the apparent need for additional education and understanding on this topic, we have determined not to include these proposed changes in the final rule. We will continue to follow the current WSFR guidance and 2 CFR part 200. We will evaluate the issue and associated needs and communicate with State fish and wildlife agencies for additional opportunities to better understand these requirements.

Section 80.98 May an agency barter goods or services to carry out a grant-funded project?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.120 What is program income?

We amend § 80.120(c)(5) to align with 2 CFR 200.307(d).

Comment 54: At § 80.120(b)(5) hunter education course fees are listed as program income, but at § 80.120(c)(3) cash received for incidental costs is not program income. These are not clearly distinguished and could cause confusion. One commenter thought we were removing § 80.120(c)(3), which we are not.

Response 54: We accept the comments requesting further clarity. We added a sentence to § 80.120(a) after defining program income to include, ''Upon request from the State agency and approval of the Service, the option at 2 CFR 200.307(b) may be allowed.'' This option is: ''If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.'' This provision clarifies that a State agency may choose to apply net program income instead of gross program income. We expanded § 80.120(b)(5) to include fees collected by the agency for delivering or providing hunter education, aquatic education, or other courses. This change clarifies that if an agency partners or contracts with another entity and the partner or vendor collects fees that do not go to the State agency, it is not program income. It also clarifies that the courses may be more than just hunter education, but any courses a State may offer under these programs. We expanded § 80.120(c)(3) not only to apply these incidental costs to all offered training, but also to explain that incidental costs are small amounts and typically not essential to training delivery. For example, if there is no fee for a course, but the agency sells each participant a workbook at cost for $5, that is incidental and not program income. If a class offers food and drink to attendees who are then asked to contribute to the cost, that is an incidental cost and not program income.

Section 80.123 How may an agency use program income?

Comment 55: Clarify the change at § 80.123 to say that program income must be spent within the grant period and program in which it is earned before requesting additional Federal funds for the activity for which the program income is earned. Otherwise, it could be misinterpreted to mean that an agency may not request any Federal funds, even if from another project or program, unless that program income is expended first.

Response 55: We concur with this suggestion and make changes. We also make additional changes to this section to reflect some of the flexibility we announced earlier this year for increased use of the cost-sharing program income method. At § 80.123(a) we change the word ''method'' to ''methods'' to indicate that a State agency may indicate its intention to use more than one method for program income. We add the next sentence that includes the clarification for when program income must be spent and designate as § 80.123(b). We designate the table that describes the three methods for applying program income as § 80.123(c) and make changes to align with 2 CFR part 200 and other sections of 50 CFR part 80. We remove the existing § 80.123(c), which gives additional criteria for using the cost-sharing method for program income, which we no longer require. These changes align to 2 CFR part 200 and give State agencies greater latitude in using program income.

Section 80.124 How may an agency use unexpended program income?

We received no comments on this section of the proposed regulations. However, we have changed the language from the proposed rule for clarification. We moved the requirement in the last sentence to the beginning of the section and associated it with an award and not ''activities.'' This revision clarifies that spending program income before requesting additional payments is specific to the award and not to ''activities,'' which could be confused to mean the same activities under other awards.

Section 80.134 Is a lease considered real property or personal property?

Comment 56: We received comments that reflect three concerns: (1) This section seems to contradict 2 CFR 200.59 regarding intangible property; (2) it is unclear how this relates to land database requirements; and (3) this question and answer read more like a definition.

Response 56: There are two separate concepts that are getting confused. The regulations at 2 CFR 200.59 state, ''Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).'' There is a difference between a lease agreement and the land associated with a lease. The lease agreement is intangible, but the land associated with the lease agreement is tangible. However, that is not the question here. The question here is whether a lease is real or personal property. The intangible lease agreement, along with the tangible property it relates to, are together treated as real property. This is supported by WSFR's Solicitor who wrote in an opinion that true leases are considered real property, unless a State Attorney General provides an official written decision indicating otherwise.

The second comment regarding the land database requirements is not a topic we intend to address in rulemaking. The commenter should discuss this issue with Regional WSFR staff. In regard to the comment that this question and answer reads more like a definition, Federal regulatory agencies should not include substantive regulatory provisions in a definition, but definitions may be included within the body of the rule, especially if they add clarity or are not used in more than one section of the rule. No comments objected to the answer to the question, but due to the confusion surrounding tangible vs. intangible property and real vs. personal property, we will not include this issue in the final rule and will address in future policy work, while concentrating on clarifying all aspects of the topic.

Section 80.136 What standards must an agency follow when conducting prescribed fire on land acquired with financial assistance under the Acts?

Comment 57: Why is the Service proposing a new section that instructs States what not to do, and why is it in the real property section? Also, please explain ''substantial involvement.''

Response 57: The Service's Branch of Fire Management is responsible for developing and maintaining the policy that includes controlled burns. In September 2005 the Joint Federal/State Task Force on Federal Assistance Policy (JTF) discussed the topic of controlled burns conducted by States using WSFR funds and a proposed update to the policy. The Service's Solicitor's Office and WSFR Policy staff worked with the Branch of Fire Management on this topic. The States wanted clarity, as often acceptance of Federal funds means

compliance with Federal requirements. The determination was that a State conducting such actions on non-Federal land without substantial involvement from a Federal entity does not have to follow the Service policy on controlled burns. This determination was documented in a Director's Memo, ''Prescribed Burning Off-Service Lands: Clarification of the Sept. 16, 2005, Addendum to the Fish and Wildlife Service Fire Management Handbook'' issued on March 29, 2007. The addendum states: ''When conducting prescribed burning off Service lands under a Service-administered grant agreement, State fish and wildlife agencies: (a) Must comply with existing State protocols that include compliance with pertinent Federal, State, and local laws; and (b) do not have to comply with any requirements of the Fish and Wildlife Service Fire Management Handbook provided that the Service does not have ''substantial involvement'' in the project, as provided in 31 U.S.C. 6301–6308. Therefore, if these requirements are met, State grantees under a Service-administered grant agreement do not have to submit documentation under the grant agreement to reflect compliance with requirements of the *Fish and Wildlife Service Fire Management Handbook.*'' The purpose of adding this section to the rule is to institutionalize this information in program regulations, a location directly applicable to these programs, as it would not be typical for grantees to refer to Service Manual chapters outside of WSFR.

Substantial involvement is what distinguishes a grant from a cooperative agreement per the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224, Feb. 3, 1978). Per OMB guidance (43 FR 36860, August 18, 1978), the basic statutory criterion for distinguishing between grants and cooperative agreements is that for the latter, substantial involvement is anticipated between the executive agency and the grantee during performance of the contemplated activity. The Code of Federal Regulations (CFR) further describes ''substantial involvement'' is a relative, rather than an absolute, concept, and that it is primarily based on programmatic factors, rather than requirements for grant or cooperative agreement award or administration. For example, substantial involvement may include collaboration, participation, or intervention in the program or activity to be performed under the award (32 CFR 22.215(b)). *Grants.gov* also addresses that, in general terms, ''substantial involvement'' refers to the degree to which Federal employees are directly performing or implementing parts of the award program. In a grant, the Federal Government more strictly maintains an oversight and monitoring role. In a cooperative agreement, Federal employees participate more closely in performing the program. When you read ''cooperative,'' think working ''side-by-side.'' (*https://blog.grants.gov/2016/07/19/what-is-a-cooperative-agreement/*) This concept has been around for decades, and Federal grant managers are trained to make these decisions. Traditionally, most awards under this rule are made using the instrument of a grant, and not a cooperative agreement. Cooperative agreements are allowed, but rarely done, as the majority of projects are conducted under the control of the State fish and wildlife agency without Federal staff having an active role. This proposed new section was located in the real property section because it involves land activities.

However, due to the concerns raised by comments to this section, we will not include this new section in the final rule and will consider for future rulemaking.

Section 80.139 What if real property is no longer useful or needed for its original purpose?

Comment 58: Recommend changing the term ''grant-funded'' to ''grant-acquired.''

Response 58: We agree and make the change.

Comment 59: Recommend removing any reference to personal property as it is confusing in a section focused on real property.

Response 59: We agree and make the change.

Section 80.140 When the Service approves the disposition of real property, equipment, intangible property, and excess supplies, what must happen to the proceeds of the disposition?

Comment 60: We received several comments on this section that address § 80.140(c) and clarifying any relationship between disposition and program income, confusion because real and personal property are addressed together in this section, questions on WSFR-funded vs. license revenue-funded assets, how this section relates to 2 CFR part 200 and State assent legislation, and specific questions related to various scenarios.

Response 60: We concur that disposition is a complicated topic and understand combining real and personal property, and all of the nuances of both the program and 2 CFR part 200, can lead to confusion as written. We will not make any changes to the final rule based on these proposed changes and will pursue this issue in future policy work.

Section 80.160 What are the information collection requirements of this part?

We received no comments on this section; however, since the proposed rule was published, WSFR has a new OMB Control Number for information collections. We updated the final rule to reflect this change.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and

Regulatory Affairs (OIRA) 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 final rule in a manner consistent with these requirements.

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

The Regulatory Flexibility Act requires an agency to consider the impact of rules on small entities, *i.e.,* small businesses, small organizations, and small government jurisdictions. If there is a significant economic impact on a substantial number of small entities, the agency must perform a regulatory flexibility analysis. This analysis is not required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act to require Federal agencies to state the

factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this final rule's potential effects on small entities as required by the Regulatory Flexibility Act. We have determined that this final rule does not have a significant impact and does not require a regulatory flexibility analysis because it:

a. Gives information to State fish and wildlife agencies that allows them to apply for and administer financial assistance more easily, more efficiently, and with greater flexibility. Only State fish and wildlife agencies may receive Wildlife Restoration, Sport Fish Restoration, and Hunter Education program and subprogram grants.

b. Addresses changes in law and regulation. This rule helps applicants and grantees by making the regulations consistent with current authorities and standards.

c. Rewords and reorganizes the regulations to make them easier to understand.

d. Allows small entities to voluntarily become subgrantees of agencies, and any impact on these subgrantees would be beneficial.

The Service has determined that the changes primarily affect State governments and any small entities affected by the changes voluntarily enter into mutually beneficial relationships with a State agency. They are primarily concessioners and subgrantees, and the impact on these small entities will be very limited and beneficial in all cases.

Consequently, we certify that because this final rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

In addition, this final rule is not a major rule under SBREFA (5 U.S.C. 804(2)) and will not have a significant impact on a substantial number of small entities because it will not:

a. Have an annual effect on the economy of $100 million or more;

b. Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The Act requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of regulations with Federal mandates that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. We have determined the following under the Unfunded Mandates Reform Act:

a. As discussed in the determination for the Regulatory Flexibility Act, this final rule will not have a significant economic effect on a substantial number of small entities.

b. The regulation does not require a small government agency plan or impose any other requirement for expending local funds.

c. The programs governed by the final rule potentially assist small governments financially when they occasionally and voluntarily participate as subgrantees of an eligible agency.

d. The final rule clarifies and improves upon the current regulations allowing State, local, and tribal governments and the private sector to receive the benefits of financial assistance funding in a more flexible, efficient, and effective manner.

e. Any costs incurred by a State, local, or tribal government or the private sector are voluntary. There are no mandated costs associated with the final rule.

f. The benefits of grant funding outweigh the costs. The Federal Government may legally provide up to 100 percent funding for grants to Puerto Rico and the District of Columbia. The Federal Government will also waive the first $200,000 of match for each grant to the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. Of the 50 States and 6 other jurisdictions that voluntarily are eligible to apply for grants in these programs each year, all participate. This is clear evidence that the benefits of this grant funding outweigh the costs.

g. This final rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

This final rule will not have significant takings implications under E.O. 12630 because it will not have a provision for taking private property. Real property acquisitions under these programs is done with willing sellers only. Therefore, a takings implication assessment is not required.

Federalism

This final rule will not have sufficient Federalism effects to warrant preparing a federalism summary impact statement under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. We work closely with the States administering these programs. They helped us identify those sections of the current regulations needing further consideration and new issues that prompted us to develop a regulatory response.

Civil Justice Reform

The Office of the Solicitor has determined under E.O. 12988 that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The final rule will help grantees because it:

a. Updates the regulations to reflect changes in policy and practice and recommendations received during the past 7 years;

b. Makes the regulations easier to use and understand by improving the organization and using plain language;

c. Modifies the final rule to amend 50 CFR part 80 published in the **Federal Register** at 76 FR 46150 on August 1, 2011, based on subsequent experience; and

d. Adopts recommendations on new issues received from State fish and wildlife agencies. We reviewed all comments on the proposed rule and considered all suggestions when preparing the final rule for publication.

Paperwork Reduction Act (PRA)

This final rule does not contain new information collection requirements that require approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB reviewed and approved the U.S. Fish and Wildlife Service application and reporting requirements associated with the Wildlife Restoration, Sport Fish Restoration, and Hunter Education & Safety financial assistance programs and assigned OMB Control Number 1018–0100, which expires July 31, 2021. An agency 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

We have analyzed this final rule under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), 43 CFR part 46, and part 516 of the Departmental Manual. This rule is not a

major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes given at 43 CFR 46.210(i).

Government-to-Government Relationship With Tribes

We have evaluated potential effects on federally recognized Indian tribes under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2. We have determined that there are no potential effects. This final rule will not interfere with the tribes' ability to manage themselves or their funds.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use, and requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866 and does not affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 80

Fish, Grant programs, Natural resources, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

Final Regulation Promulgation

For the reasons discussed in the preamble, we amend title 50 of the Code of Federal Regulations, chapter I, subchapter F, part 80, as follows:

PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN–ROBERTSON WILDLIFE RESTORATION AND DINGELL–JOHNSON SPORT FISH RESTORATION ACTS

■ 1. The authority citation for part 80 is revised to read as follows:

Authority: 16 U.S.C. 669–669k and 777–777n, except 777e–1 and g–1.

Subpart A—General

■ 2. Amend § 80.2 by:
■ a. Adding in alphabetical order a definition for ''Asset'';
■ b. Revising the definition of ''Capital improvement'';
■ c. Removing the definition of ''Match'';
■ d. Adding in alphabetical order definitions for ''Match or cost share'' and ''Obligation''; and
■ e. Revising the definition of ''Real property''.

The additions and revisions read as follows:

§ 80.2 What terms do I need to know?

* * * * *

Asset means all tangible and intangible real and personal property of monetary value. This includes *Capital assets* as defined at 2 CFR 200.12, *Equipment* as defined at 2 CFR 200.33, and real property of any value.

Capital improvement or *capital expenditure for improvement* means:

(1) A structure that costs at least $25,000 to build, acquire, or install; or the alteration or repair of a structure or the replacement of a structural component, if it increases the structure's useful life by at least 10 years or its market value by at least $25,000.

(2) An agency may use its own definition of capital improvement if its definition includes all capital improvements as defined here.

* * * * *

Match or cost share means the non-Federal portion of project costs or value of any non-Federal in-kind contributions of a grant-funded project, unless a Federal statute authorizes match using Federal funds. Match must meet the requirements at 2 CFR 200.306(b)(1)–(7).

Obligation has two meanings depending on the context:

(1) When a grantee of Federal financial assistance commits funds by incurring costs for purposes of the grant, the definition at 2 CFR 200.71 applies.

(2) When the Service sets aside funds for disbursement immediately or at a later date in the formula-based programs under the Acts, the definition at 50 CFR 80.91 applies.

* * * * *

Real property means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water. Examples of real property include fee, conservation easements, access easements, utility easements, and mineral rights. A leasehold interest is also real property except in those States where the State Attorney General provides an official opinion that determines a lease is personal property under State law.

(1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically affixed to it by a natural process or human action. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.

(2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel's owner to travel across an adjacent parcel.

(3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it. For example, a grazing permit is often incorrectly labeled a lease, which can be real property, but most grazing permits are actually licenses, which are not real property.

* * * * *

■ 3. Revise subpart D to read as follows:

Subpart D—License Holder Certification

Sec.
80.30 Why must an agency certify the number of paid license holders?
80.31 How does an agency certify the number of paid license holders?
80.32 What is the certification period?
80.33 How does an agency decide who to count as paid license holders in the annual certification?
80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?
80.35 What additional requirements apply to certifying multiyear licenses?
80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?
80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?
80.38 May an entity other than the State fish and wildlife agency offer a discount on a license, or offer a free license, under any circumstances?
80.39 What must an agency do if it becomes aware of errors in its certified license data?
80.40 May the Service recalculate an apportionment if an agency submits revised data?
80.41 May the Director correct a Service error in apportioning funds?

Subpart D—License Holder Certification

§ 80.30 Why must an agency certify the number of paid license holders?

A State fish and wildlife agency must certify the number of people having paid licenses to hunt and paid licenses to fish because the Service uses these data in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States.

§ 80.31 How does an agency certify the number of paid license holders?

(a) A State fish and wildlife agency certifies the number of paid license

holders by responding to the Director's annual request for the following information:

(1) The number of people who have paid licenses to hunt in the State during the State-specified certification period (certification period); and

(2) The number of people who have paid licenses to fish in the State during the certification period.

(b) The agency director or his or her designee:

(1) Must certify the information at paragraph (a) of this section in the format that the Director specifies;

(2) Must provide documentation to support the accuracy of this information at the Director's request;

(3) Is responsible for eliminating multiple counting of the same individuals in the information that he or she certifies; and

(4) May use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose.

(c) If an agency director uses statistical sampling to eliminate multiple counting of the same individuals, he or she must ensure that the sampling is complete by the earlier of the following:

(1) Five years after the last statistical sample; or

(2) Before completing the first certification following any change in the licensing system that could affect the number of license holders.

§ 80.32 What is the certification period?

A certification period must:

(a) Be 12 consecutive months;

(b) Correspond to the State's fiscal year or license year;

(c) Be consistent from year to year unless the Director approves a change; and

(d) End at least 1 year and no more than 2 years before the beginning of the Federal fiscal year in which the apportioned funds first become available for expenditure.

§ 80.33 How does an agency decide who to count as paid license holders in the annual certification?

(a) A State fish and wildlife agency must count only those people who have a license issued:

(1) In the license holder's name; or

(2) With a unique identifier that is traceable to the license holder, who must be verifiable in State records.

(b) A State fish and wildlife agency must count a person holding a single-year license only once in the certification period in which the license first becomes valid. (Single-year licenses are valid for any length of time less than 2 years.)

(c) A person is counted as a valid license holder even if the person is not required to have a paid license or is unable to hunt or fish.

(d) A person having more than one valid hunting license is counted only once each certification period as a hunter. A person having more than one valid fishing license is counted only once each certification period as an angler. A person having both a valid hunting license and a valid fishing license, or a valid combination hunting/fishing license, may be counted once each certification period as a hunter and once each certification period as an angler. The license holder may have voluntarily obtained them or was required to have them in order to obtain a different privilege.

(e) A person who has a license that allows the license holder only to trap animals or only to engage in commercial fishing or other commercial activities must not be counted.

§ 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?

(a) For the State fish and wildlife agency to certify a license holder, the agency must establish that it receives the following minimum gross revenue:

(1) $2 for each year the license is valid, for either the privilege to hunt or the privilege to fish; and

(2) $4 for each year the license is valid for a combination license that gives privileges to both hunt and fish.

(b) A State fish and wildlife agency must follow the requirement in paragraph (a) of this section for all licenses sold as soon as practical, but no later than September 27, 2021.

(c) A State may apply these standards to all licenses certified in the license certification period that this rule becomes effective.

§ 80.35 What additional requirements apply to certifying multiyear licenses?

The following additional requirements apply to certifying multiyear licenses:

(a) A State fish and wildlife agency must follow the requirement at § 80.34(a) for all multiyear licenses sold before and after the date that the agency adopts the new standard, unless following the exception at paragraph (c) of this section.

(b) If an agency is using an investment, annuity, or similar method to fulfill the net-revenue requirements of the version of § 80.33 that was effective from August 31, 2011, or any prior rule that required net revenue, until September 26, 2019, the agency must discontinue that method and convert to the new standard, unless following the exception at paragraph (c) of this section.

(1) If the revenue collected at the time of sale has not been spent, the agency must begin to use the new standard by applying the total amount the agency received at the time of sale.

(2) If the revenue collected at the time of sale has been spent, the agency must apply the new standard as if it were applicable at the time of sale. For example, if a single-privilege, multiyear license sold for $100 in 2014, and the agency adopts the new standard in 2018, then 4 years have been used toward the amount received by the agency (4 years × $2 = $8) and the license holder may be counted for up to 46 more years ($100 − $8 = $92/$2 = 46).

(c) An agency may continue to follow the requirements of the version of § 80.33 that was effective from August 31, 2011, or any prior rule that required net revenue, until September 26, 2019, for those multiyear licenses that were sold before the date specified at § 80.34(b) if the agency:

(1) Notifies the Director of the agency's intention to do so;

(2) Describes how the new requirement will cause financial or operational harm to the agency when applied to licenses sold before the effective date of these regulations; and

(3) Commits to follow the current standard for those multiyear licenses sold after the date specified at § 80.34(b).

(d) A multiyear license may be valid for either a specific or indeterminate number of years, but it must be valid for at least 2 years.

(e) The agency may count the license for all certification periods for which it received the minimum required revenue, as long as the license holder meets all other requirements of this subpart. For example, an agency may count a single-privilege, multiyear license that sells for $25 for 12 certification periods. However, if the license exceeds the life expectancy or the license is valid for only 5 years, it may be counted only for the number of years it is valid.

(f) An agency may spend a multiyear license fee as soon as the agency receives it.

(g) The agency must count only the licenses that meet the minimum required revenue for the license period based on:

(1) The duration of the license in the case of a multiyear license with a specified ending date; or

(2) Whether the license holder remains alive.

(h) The agency must use and document a reasonable technique for deciding how many multiyear-license holders remain alive in the certification period. Some examples of reasonable techniques are specific identification of license holders, statistical sampling, life-expectancy tables, and mortality tables. The agency may instead use 80 years of age as a default for life expectancy.

§ 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?

If a State fish and wildlife agency receives funds from the State or other entity to cover fees for some license holders, the agency may count those license holders in the annual certification only under the following conditions:

(a) The State funds to cover license fees must come from a source other than hunting- and fishing-license revenue.

(b) The State must identify funds to cover license fees separately from other funds provided to the agency.

(c) The agency must receive at least the average amount of State-provided discretionary funds that it received for the administration of the State's fish and wildlife agency during the State's 5 previous fiscal years.

(1) State-provided discretionary funds are those from the State's general fund that the State may increase or decrease if it chooses to do so.

(2) Some State-provided funds are from special taxes, trust funds, gifts, bequests, or other sources specifically dedicated to the support of the State fish and wildlife agency. These funds typically fluctuate annually due to interest rates, sales, or other factors. They are not discretionary funds for purposes of this part as long as the State does not take any action to reduce the amount available to its fish and wildlife agency.

(d) The agency must receive and account for the State or other entity funds as license revenue.

(e) The agency must issue licenses in the license holder's name or by using a unique identifier that is traceable to the license holder, who is verifiable in State records.

(f) The license fees must meet all other requirements in this part.

§ 80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?

Yes. A State fish and wildlife agency may certify a license that is sold at a discount when combined with another license or privilege as long as the agency meets the rules for minimum revenue at § 80.34 for each privilege.

§ 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license, or offer a free license, under any circumstances?

(a) An entity other than the agency may offer the public a license that costs less than the regulated price and a State fish and wildlife agency may certify the license holder only if:

(1) The license is issued to the individual according to the requirements at § 80.33;

(2) The amount received by the agency meets all other requirements in this subpart; and

(3) The agency agrees to the amount of revenue it will receive.

(b) An entity other than the agency may offer the public a license that costs less than the regulated price without the agency agreeing, but must pay the agency the full cost of the license.

§ 80.39 What must an agency do if it becomes aware of errors in its certified license data?

A State fish and wildlife agency must submit revised certified data on paid license holders within 90 days after the agency becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if it becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

§ 80.40 May the Service recalculate an apportionment if an agency submits revised data?

The Service may recalculate an apportionment of funds based on revised certified license data under the following conditions:

(a) If the Service receives revised certified data for a pending apportionment before the Director approves the final apportionment, the Service may recalculate the pending apportionment.

(b) If the Service receives revised certified data for an apportionment after the Director has approved the final version of the apportionment, the Service may recalculate the apportionment only if doing so would not reduce funds to other State fish and wildlife agencies.

§ 80.41 May the Director correct a Service error in apportioning funds?

Yes. The Director may correct any error that the Service makes in apportioning funds.

Subpart E—Eligible Activities

■ 4. Amend § 80.50 by:

■ a. Revising paragraph (a)(6);

■ b. Adding paragraphs (a)(9) and (10);

■ c. Redesignating paragraph (b)(2) as paragraph (b)(3); and

■ d. Adding new paragraph (b)(2) and paragraph (c)(6).

The revisions and additions read as follows:

§ 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

* * * * *

(a) * * *

(6) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve lands and waters as wildlife habitat; or

(ii) Provide public access for hunting or other wildlife-oriented recreation.

(iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and services under an award, with emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.

* * * * *

(9) Provide technical assistance.

(10) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(b) * * *

(2) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

* * * * *

(c) * * *

(6) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

■ 5. Amend § 80.51 by revising paragraph (a)(8) and adding paragraphs (a)(12) and (13) to read as follows:

§ 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

* * * * *

(a) * * *

(8) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve aquatic habitat for sport fish, or land as a buffer to protect aquatic habitat for sport fish; or

(ii) Provide public access for sport fishing.

(iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and services under an award, with

emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.

* * * * *

(12) Provide technical assistance.

(13) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

* * * * *

Subpart F—Allocation of Funds by an Agency

■ 6. Amend § 80.60 by revising the introductory text and adding a heading to the table to read as follows:

§ 80.60 What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?

The relationship between the Basic Hunter Education and Safety subprogram (Basic Hunter Education) and the Enhanced Hunter Education and Safety program (Enhanced Hunter Education) is in table 1 to § 80.60:

Table 1 to § 80.60

* * * * *

Subpart G—Application for a Grant

■ 7. Amend § 80.82 by:

■ a. Revising paragraph (c)(2);

■ b. Redesignating paragraphs (c)(3) through (13) as paragraphs (c)(4) through (14);

■ c. Adding a new paragraph (c)(3); and

■ d. Revising newly designated paragraphs (c)(9)(iii) through (v) and (c)(10).

The revisions and addition read as follows:

§ 80.82 What must an agency submit when applying for a project-by-project grant?

* * * * *

(c) * * *

(2) *Purpose.* State the purpose and base it on the need. The purpose states the desired outcome of the proposed project in general or abstract terms.

(3) *Objectives.* State the objectives and base them on the need. The objectives state the desired outcome of the proposed project in terms that are specific and quantified.

* * * * *

(9) * * *

(iii) Request the Regional Director's approval for the additive or matching method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need when using program income as match.

(iv) Indicate whether the agency wants to treat program income that it earns after the grant period as either license revenue or additional funding for purposes consistent with the grant terms and conditions or program regulations.

(v) Indicate whether the agency wants to treat program income that the subgrantee earns as license revenue, additional funding for the purposes consistent with the grant or subprogram, or income subject only to the terms of the subgrant agreement.

(10) *Budget narrative.* (i) Provide costs by project and subaccount with additional information sufficient to show that the project is cost effective. Agencies may obtain the subaccount numbers from the Service's Regional Division of Wildlife and Sport Fish Restoration.

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are preaward costs, capital improvements or expenditures, real property acquisitions, or equipment purchases.

(iii) Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments.

* * * * *

Subpart H—General Grant Administration

■ 8. Revise § 80.97 to read as follows:

§ 80.97 May an agency barter goods or services to carry out a grant-funded project?

Yes. A State fish and wildlife agency may barter to carry out a grant-funded project. A barter transaction is the exchange of goods or services for other goods or services without the use of cash. Barter transactions are subject to the cost principles at 2 CFR part 200.

■ 9. Amend § 80.98 by revising paragraph (a) introductory text and adding a heading to the table in paragraph (a) to read as follows:

§ 80.98 How must an agency report barter transactions?

(a) A State fish and wildlife agency must follow the requirements in table 1 to § 80.98(a) when reporting barter transactions in the Federal financial report:

Table 1 to § 80.98(a)

* * * * *

Subpart I—Program Income

■ 10. Revise § 80.120 to read as follows:

§ 80.120 What is program income?

(a) Program income is gross income received by the grantee or subgrantee and earned only as a result of the grant during the grant period. Upon request from the State agency and approval of the Service, the option at 2 CFR 200.307(b) may be allowed.

(b) Program income includes revenue from any of the following:

(1) Services performed under a grant.

(2) Use or rental of real or personal property acquired, constructed, or managed with grant funds.

(3) Payments by concessioners or contractors under an arrangement with the agency or subgrantee to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds.

(4) Sale of items produced under a grant.

(5) Fees collected by the agency for delivering or providing hunter education, aquatic education, or other courses.

(6) Royalties and license fees for copyrighted material, patents, and inventions developed as a result of a grant.

(7) Sale of a product of mining, drilling, forestry, or agriculture during the period of a grant that supports the:

(i) Mining, drilling, forestry, or agriculture; or

(ii) Acquisition of the land on which these activities occurred.

(c) Program income does not include any of the following:

(1) Interest on grant funds, rebates, credits, discounts, or refunds.

(2) Sales receipts retained by concessioners or contractors under an arrangement with the agency to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds.

(3) Cash received by the agency or by volunteer instructors to cover incidental costs of a hunter education, aquatic education, or other classes. Incidental costs are small amounts and typically not essential to the training delivery. Materials purchased at cost by the student, separate from course fees, are incidental costs.

(4) Cooperative farming or grazing arrangements as described at § 80.98.

(5) Proceeds from the sale of real property, equipment, or supplies.

■ 11. Revise § 80.123 to read as follows:

§ 80.123 How may an agency use program income?

(a) A State fish and wildlife agency may choose any of the three methods listed in paragraph (b) of this section for applying program income to Federal and non-Federal outlays. The agency

may also use a combination of these methods. The method or methods that the agency chooses will apply to the program income that it earns during the grant period and to the program income that any subgrantee earns during the grant period. The agency must indicate the method or methods that it wants to use in the project statement that it submits with each application for Federal assistance.

(b) Program income must be spent within the grant period and program in which it is earned and before requesting additional Federal funds for the activity for which the program income is earned.

(c) The three methods for applying program income to Federal and non-Federal outlays are in table 1 to § 80.123(c):

TABLE 1 TO § 80.123(c)

Method	Requirements for using method
(1) Deduction	(i) The agency must deduct the program income from total allowable costs to determine the net allowable costs. (ii) The agency must use program income for current costs under the grant unless the Regional Director authorizes otherwise. (iii) If the agency does not indicate the method that it wants to use in the project statement, then it must use the deduction method.
(2) Addition	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency may add the program income to the Federal and non-Federal funds under the grant. (iii) The agency must use the program income for the purposes of the grant and under the terms of the grant.
(3) Cost sharing or matching	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency must explain in the project statement the expected program income, how the agency proposes to use the program income to satisfy matching requirements, how the agency will use program income earned in excess of required match, and the primary conservation or recreation objective sufficient to show program income as a secondary benefit. (iii) If neither the agency's project statement nor the award indicates how program income in excess of matching requirements will be applied, the agency must use the deduction method.

■ 12. Revise § 80.124 to read as follows:

§ 80.124 How may an agency use unexpended program income?

A State fish and wildlife agency must spend program income before requesting additional payments under an award. If the agency has unexpended program income on its final Federal financial report, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the income.

Subpart J—Real Property

■ 13. Revise § 80.137 to read as follows:

§ 80.137 What if real property is no longer useful or needed for its original purpose?

If the director of the State fish and wildlife agency and the Regional Director jointly decide that real property acquired with grant funds is no longer useful or needed for its original purpose under the grant, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or

(b) Follow the regulations at 2 CFR 200.311 and consult with the Regional Director on how to treat proceeds from the disposition of real property.

Subpart L—Information Collection

■ 14. Amend § 80.160 by revising paragraphs (a)(4), (5), and (7), (b), and (c) to read as follows:

§ 80.160 What are the information collection requirements of this part?

(a) * * *

(4) Provide a project statement that describes the need, purpose and objectives, results or benefits expected, approach, geographic location, explanation of costs, and other information that demonstrates that the project is eligible under the Acts and meets the requirements of the Federal Cost Principles and the laws, regulations, and policies applicable to the grant program (OMB Control Number 1018–0100).

(5) Change or update information provided to the Service in a previously approved application (OMB Control Number 1018–0100).

* * * * *

(7) Report as a grantee on progress in completing the grant-funded project (OMB Control Number 1018–0100).

(b) The authorizations for information collection under this part are in the Acts and in 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.''

(c) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 5275 Leesburg Pike, MS: BPHC, Falls Church, Virginia 22041–3803.

Dated: August 15, 2019.

Ryan Hambleton,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–18187 Filed 8–26–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02]

RIN 0648–XY015

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2019 total allowable catch of Pacific cod allocated to catcher/processors using trawl gear in the Central Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 22, 2019,

through 2400 hours, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 total allowable catch (TAC) of Pacific cod allocated to catcher/processors using trawl gear in the Central Regulatory Area of the GOA is 239 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2019 TAC of Pacific cod allocated to catcher/processors using trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that Pacific cod caught by catcher/processors using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(a)(2).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 21, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by §§ 679.20 and 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18430 Filed 8–22–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 166
Tuesday, August 27, 2019

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 HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 127 and 133

[USCBP–2019–0031]

RIN 1515–AE35

Disclosure of Information Regarding Abandoned Merchandise

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations pertaining to disclosure of information regarding merchandise bearing suspected counterfeit trademarks. The proposed amendment would create a procedure for the disclosure of information otherwise protected by the Trade Secrets Act to a trademark owner when merchandise bearing suspected counterfeit trademarks has been voluntarily abandoned.

DATES: Comments on the proposed rule must be received on or before October 28, 2019.

ADDRESSES: You may submit comments, identified by docket number, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP 2019–0031.
- *Mail:* Trade and Commercial Regulations Branch, Office of Trade, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the proposed rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Alex Bamiagis, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, (202) 325–0415.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Among other responsibilities, U.S. Customs and Border Protection (CBP) enforces intellectual property rights (IPR) laws and regulations at the border. The majority of the CBP regulations prescribing these efforts are found in part 133 of title 19 of the Code of Federal Regulations (19 CFR part 133). Part 133 provides for the recordation of trademarks, trade names, and copyrights with CBP and prescribes the enforcement procedures applicable to suspected infringing merchandise. Part 133 also sets forth procedures for the detention, seizure, and disposition of articles violating certain IPR laws and regulations, including information disclosure to right owners in appropriate circumstances. Consistent with Executive Order 13785, this proposed regulatory amendment would allow the disclosure of certain information to a trademark owner in circumstances where goods have been voluntarily abandoned as described in 19 CFR 127.12(b), if CBP suspects that the successful importation of the merchandise would have violated United States trade laws prohibiting the importation of merchandise bearing counterfeit marks.

I. The Trade Secrets Act and Disclosure of Information Pertaining to Certain Intellectual Property Rights Enforced at the Border

The Trade Secrets Act (18 U.S.C. 1905) bars the unauthorized disclosure by government officials of any information received in the course of their employment or official duties when such information ''concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association.'' 18 U.S.C. 1905.

Specifically, the Trade Secrets Act protects those required to furnish confidential commercial or financial information to the government by shielding them from the competitive disadvantage that could result from disclosure of that information by the government. In turn, this protection encourages those providing information to the government to furnish accurate and reliable information that is useful to the government.

The Trade Secrets Act, however, permits those government officials covered by the Act to disclose protected information when the disclosure is otherwise ''authorized by law,'' which includes both statutes expressly authorizing disclosure and properly promulgated substantive agency regulations authorizing disclosure based on a valid statutory interpretation. *See Chrysler* v. *Brown,* 441 U.S. 281, 294–316 (1979).

The Secretary of the Treasury thus has authority to disclose information otherwise protected under the Trade Secrets Act when such disclosures are authorized by law. Disclosures meeting

the ''authorized by law'' standard of the Trade Secrets Act include those made pursuant to regulations that: (1) Are in compliance with the provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); and (2) implement a valid statute. *Chrysler,* 441 U.S. at 294–96, 301–03.

Several provisions in titles 15 and 19 of the United States Code give CBP authority to promulgate regulations to enforce prohibitions against the importation of merchandise bearing infringing and counterfeit trademarks. The Lanham Trademark Act (15 U.S.C. 1124) authorizes the Secretary of the Treasury to promulgate regulations regarding trademarks and to aid CBP officers in enforcing the prohibitions against importation. Additionally, sections 526(e) and 596 of the Tariff Act of 1930, as amended (19 U.S.C. 1526(e), and 19 U.S.C. 1595a(c)), prohibit the importation of merchandise bearing a counterfeit mark and the introduction or attempted introduction into the United States of merchandise or packaging in which, inter alia, trademark protection violations are involved. Moreover, section 526(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1526(e)), requires CBP to notify the owner of the trademark when merchandise bearing a counterfeit mark is seized. Section 624 of the Tariff Act of 1930, as amended (19 U.S.C. 1624), authorizes the Secretary of the Treasury to promulgate regulations to carry out the provisions of the Tariff Act of 1930, as amended. Collectively, these statutes authorize the Secretary of the Treasury to disclose certain importation information to right owners to assist CBP in its IPR enforcement efforts. Disclosure of this information to right owners can help CBP prevent the importation of infringing and counterfeit merchandise by identifying sources or channels of violative shipments.

If CBP suspects that an article imported into the United States bears a counterfeit mark, it may detain the article for up to 30 days from the date on which the merchandise is presented for examination. 19 U.S.C. 1499; 19 CFR 133.21(b). During the detention period, and in accordance with 19 CFR 133.21(b)(4), CBP may disclose to the owner of the mark limited importation information if CBP concludes that the disclosure would assist CBP in determining whether the imported article bears a counterfeit mark. CBP also discloses to the owner of the mark comprehensive importation information after CBP seizes merchandise for bearing a counterfeit mark in accordance with 19 CFR 133.21(e).

II. Voluntary Abandonment of Merchandise Suspected of Bearing Counterfeit Marks

As noted in a 2018 report issued by the Government Accountability Office (GAO), ''the growth of e-commerce has provided additional opportunities for counterfeiters to deceive consumers . . .'' and challenged CBP's ability to prohibit the importation of counterfeit merchandise. U.S. Gov't Accountability Office, GAO 18–216, ''Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market,'' *Report to the Chairman, Committee on Finance, U.S. Senate,* p. 10–11 (2018). The report notes that e-commerce merchandise is increasingly imported in low-value shipments arriving via express consignment or international mail. *Id.* Such shipments often are voluntarily abandoned if CBP detains the merchandise on suspicion of an IPR violation. The cost of demonstrating to CBP that a shipment is legitimate may outweigh the importation's value, and importers frequently fail to respond to CBP inquiries. Instead, some of these importations may be voluntarily abandoned (*see* 19 CFR 127.12(b)) after CBP has detained the merchandise on suspicion of an IPR violation.

Section 302 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125; 130 Stat. 149; Section 628a of the Tariff Act of 1930 (19 U.S.C. 1628a)) provides CBP with authority to disclose information to right holders in certain situations when it would assist CBP in determining if the merchandise is being imported in violation of the copyright or trademark laws. Under the current regulations in part 133, however, when merchandise is voluntarily abandoned, trademark owners do not receive the importation information that would be provided if merchandise bearing a counterfeit trademark were seized. In fact, the regulations in part 133 are silent with respect to IPR enforcement against merchandise that has been voluntarily abandoned.

III. Explanation of Proposed Amendment to Part 133

Executive Order 13785, ''Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws,'' instructs CBP to ensure that it can share information regarding voluntarily abandoned merchandise with right owners ''to ensure the timely and efficient enforcement of laws protecting [IPR] holders from the importation of counterfeit goods.'' 82 FR 16719 (March 31, 2017). As a result, CBP is proposing to add a new paragraph to 19 CFR 133.21. CBP is proposing to disclose the same comprehensive importation information provided to trademark owners when merchandise has been seized in cases where merchandise has been voluntarily abandoned, if CBP suspects the successful importation of the merchandise would have violated United States trade laws prohibiting importation of merchandise bearing counterfeit marks, and that disclosure would assist CBP in its IPR enforcement mission.

Under those conditions, the amendment would allow CBP to disclose the following information: The date of importation, the port of entry, the description of the merchandise, the quantity of the merchandise, the country of origin of the merchandise, the name and address of the manufacturer, the name and address of the exporter, and the name and address of the importer. As in the seizure context, trademark owners may use this importation information to help CBP prevent IPR violations by identifying sources or channels of violative shipments.

IV. Other Conforming Amendments

Sections 133.21 to 133.25 currently cite to section 818(g) of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1496; 10 U.S.C. 2302 note) as specific authority. Section 302(b) of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125; 130 Stat. 122; Section 628a of the Tariff Act of 1930 (19 U.S.C. 1628a), as amended) terminated and replaced the NDAA authority. Because of these statutory changes, CBP is proposing to revise the specific authority citation for sections 133.21 to 133.25.

CBP is also proposing to add a new paragraph (c) in 19 CFR 127.12, cross-referencing the detention and disclosure provisions of 19 CFR 133.21(b) which may be applicable to voluntarily abandoned merchandise suspected of bearing a counterfeit mark.

Statutory and Regulatory Requirements

I. Executive Orders 13563, 12866, and 13771

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Importers who voluntarily abandon merchandise consist of all types of businesses and individuals, including small businesses, so it is likely that a substantial number of small businesses are affected. However, the impact is not significant, because this rule would impose no new monetary costs to these importers. If they do not wish to have their merchandise's information shared with the right owner, they may choose not to voluntarily abandon these goods. Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, CBP invites comments about the impact of this rule, if adopted, on small entities.

Signing Authority

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations concerning trademark enforcement.

List of Subjects

19 CFR Part 127

Exports, Freight, Imports.

19 CFR Part 133

Counterfeit trademarks, Detentions, Disclosure, Restricted merchandise, Trademarks, Trade names.

For the reasons stated above in the preamble, CBP proposes to amend parts 127 and 133 of title 19 of the Code of Federal Regulations (19 CFR parts 127 and 133) as set forth below.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

■ 1. The general authority citation for part 127 continues to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 16241646a; 26 U.S.C. 5753.

■ 2. Section 127.12 is amended by adding paragraph (c), to read as follows:

§ 127.12 Abandoned merchandise.

* * * * *

(c) If merchandise voluntarily abandoned pursuant to paragraph (b) of this section is suspected of bearing a counterfeit mark, it also may be subject to the detention and disclosure provisions of § 133.21(b) of this chapter.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

■ 3. The general authority citations for part 133 continue to read as follows and the specific authority citations for §§ 133.21 through 133.25 are revised to read as follows:

Authority: 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1624; 31 U.S.C. 9701.

Sections 133.21 through 133.25 also issued under 19 U.S.C. 1628a; Sec. 302, Public Law 114–125.

■ 4. In § 133.21, paragraph (b)(6) is added to read as follows:

§ 133.21 Articles suspected of bearing counterfeit marks.

* * * * *

(b) * * *

(6) *Voluntary abandonment and disclosure to owner of the mark of comprehensive importation information.* When merchandise that bears a mark suspected by CBP of being a counterfeit version of a mark that is registered with the U.S. Patent and Trademark Office and recorded with CBP pursuant to subpart A of this part has been voluntarily abandoned under § 127.12(b) of this chapter, CBP may disclose to the owner of the mark the following comprehensive importation information, if CBP determines the disclosure will assist in CBP's trademark enforcement:

(i) The date of importation;

(ii) The port of entry;

(iii) The description of the merchandise;

(iv) The quantity of the merchandise;

(v) The country of origin of the merchandise;

(vi) The name and address of the manufacturer;

(vii) The name and address of the exporter; and

(viii) The name and address of the importer.

* * * * *

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: August 21, 2019.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2019–18317 Filed 8–26–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0683]

RIN 1625–AA00

Safety Zone; Spaceport Sheboygan Corporate Rocket Challenge, Sheboygan Harbor, Sheboygan, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone for certain waters of the Sheboygan Harbor and Lake Michigan. This action is necessary to provide for the safety of life on these navigable waters near Sheboygan, WI during a rocket launch event on September 28, 2019. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Lake Michigan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 11, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0683 using the Federal eRulemaking Portal at *https://*

www.regulations.gov. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Kyle Weitzell, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Kyle.W.Weitzell@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Great Lakes Aerospace Science and Education Center notified the Coast Guard that it will be conducting a rocket launch event from 9 a.m. through 12 noon on September 28, 2019. The rocket is to be launched from shore at the Sheboygan South Pier. Hazards from rocket launches over the water include accidental discharge of the ignition system, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Lake Michigan (COTP) has determined that potential hazards associated with the rockets to be used in this event would be a safety concern for anyone within a 1,500-yard radius of the rocket launch site.

The purpose of this rulemaking is to protect the safety of vessels and the navigable waters within a 1,500-yard radius of the Sheboygan South Pier launch site located at coordinates 43°44.914′ N, 087°41.869′ W before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9 a.m. through 4 p.m. on September 28, 2019. The safety zone would cover all navigable waters within 1,500 yards of the Sheboygan South Pier launch site located at coordinates 43°44.914′ N, 087°41.869′ W near Sheboygan, WI. The duration of the zone is intended to protect the safety of vessels and these navigable waters before, during, and after the scheduled 9 a.m. through 12 noon rocket launch event. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This Notice of Proposed Rulemaking (NPRM) has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of this action. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into an area of the Sheboygan Harbor and Lake Michigan in Sheboygan, WI that is within 1,500 yards of the Sheboygan South Pier launch site located at coordinates 43°44.914′ N, 087°41.869′ W during the rocket launch event, not to exceed seven hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the COTP.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would 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 Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting no more than seven hours that would prohibit entry within 1,500 yards of a rocket launch site. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination will be available in the docket where indicated under **ADDRESSES** once it is completed. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T09–0683 to read as follows:

§ 165.T09–0683 Safety Zone; Spaceport Sheboygan Corporate Rocket Challenge, Sheboygan Harbor, Sheboygan, WI.

(a) *Location.* All navigable waters of the Sheboygan Harbor and Lake Michigan near Sheboygan, WI within 1,500 yards of the Sheboygan South Pier rocket launch site located at coordinates 43°44.914′ N, 087°41.869′ W.

(b) *Enforcement Period.* This rule will be enforced from 9 a.m. through 4 p.m. on September 28, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated on-scene representative.

(3) The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: August 21, 2019.

T.J. Stuhlreyer,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2019–18390 Filed 8–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0614]

RIN 1625–AA00

Safety Zone; Neches River, Beaumont, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone on the navigable waters of the Neches River extending 500-feet on either side of the Kansas City Southern Railroad Bridge that crosses the Neches River in Beaumont, TX. The safety zone is necessary to protect persons, bridge, and property on or near the bridge from potential damage from passing vessels until missing and/or damaged fendering systems are repaired or replaced. Entry of certain vessels or persons into this zone would be prohibited unless specifically authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative. We

invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 11, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0614 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *Scott.K.Whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On April 19, 2018, the Coast Guard was notified that the wood fendering systems designed to protect bridge support columns of the Kansas City Southern Railroad Company's bridge (KSC) from strikes by vessels transiting under the bridge had been damaged or destroyed by Hurricane Harvey. The south bank column protection fenders are missing and the north bank column protection fenders are severely damaged. KCS indicated that strikes to the support columns could compromise the bridge structure. In response, on May 7, 2018 the Coast Guard published a temporary final rule; request for comment titled *Safety Zone; Neches River, Beaumont, TX* (83 FR 19965). During the comment period that ended on May 29, 2018, we received no comments. The safety zone was established on May 7, 2018, extended on September 5, 2018 (83 FR 45047) and extended again on January 31, 2019 (84 FR 530) via temporary final rules titled *Safety Zone; Neches River, Beaumont, TX.* The zone is scheduled to expire on September 30, 2019. Repairs are not yet completed leaving the bridge structural columns vulnerable to vessel strikes.

The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards posed by the unprotected bridge columns are a safety concern to the KCS Bridge and to persons and property on or near the bridge. The purpose of this rule is to provide for the safety of the KCS Bridge and persons and property on or near the bridge.

The Coast Guard is issuing this notice of proposed rulemaking (NPRM) with a 15-day prior notice and opportunity to comment pursuant to section (b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553). This provision authorizes an agency to publish a rule in less than 30 days before its effective date for ''good cause found and published with the rule.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because it is impractical to provide a 30-day comment period. This proposed safety zone is necessary to ensure the safety of vessels and persons during the marine events. It is impracticable to publish an NPRM with a 30-day comment period because we must establish this safety zone by September 30, 2019. A 15-day comment period would allow the Coast Guard to provide for public notice and comment, but also update the proposed regulation soon enough that the length of the notice and comment period does not compromise public safety.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone that extends 500-feet on either side of the KCS Bridge that crosses the Neches River in Beaumont, TX in approximate location 30° 04′54.8″ N 094°05′29.4″ W. The duration of the zone is intended to protect the bridge support columns as well as persons and property on or near the bridge until the bridge fendering is repaired or replaced. Only vessels less than 65 feet in length and not engaged in towing would be authorized to enter the zone, unless otherwise permitted by the COTP or a designated representative.

Persons and vessels desiring to enter the safety zone would have to request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 65A or 13 VHF–FM, or by telephone at (409) 719–5070.

Permission to transit through the bridge would be based on weather, tide and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone would comply with the lawful orders or directions given to them by COTP or a designated representative.

Intentional or unintentional contact with any part of the bridge or associated structure, including fendering systems, support columns, spans or any other portion of the bridge, would be strictly prohibited. Any contact with the bridge or associated structures would have to be immediately reported to VTS Port Arthur on channels 65A, 13 or 16 VHF–FM or by telephone at (409) 719–5070.

The Coast Guard would inform the public of the effective period of this safety zone through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the nature of vessel traffic in the area and the location, and duration of the safety zone. This rule would be only affect certain vessels transiting the upper reaches of the Neches River in Beaumont, TX, and would terminate once the necessary repairs are completed for the bridge. The Coast Guard would issue a VTS Advisory concerning the 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 proposed rule would not

have a significant economic impact on a substantial number of small entities.

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would 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 Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit entry within 500-feet of either side of the KCS Bridge that crosses the Neches River in Beaumont, TX. Normally such actions are categorically excluded from further review under paragraph L60(d) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration supporting this determination is included in the docket with this rule where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0614 to read as follows:

§ 165.T08–0614 Safety Zone; Neches River, Beaumont, TX

(a) *Location.* The following area is a safety zone: All navigable waters extending 500-feet on either side of the Kansas City Southern Railroad Bridge that crosses the Neches River in Beaumont, TX in approximate location 30°04′54.8″ N 094°05′29.4″ W.

(b) *Effective period.* This section is effective from 1 a.m. on October 1, 2019

through midnight on January 31, 2020, or until missing and/or damaged fendering systems are repaired or replaced, whichever occurs first.

(c) *Regulations.* (1) No vessel may enter or remain in the safety zone except:

(i) A vessel less than 65 feet in length and not engaged in towing; or

(ii) A vessel authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative

(2) Persons and vessels desiring to enter the safety zone must request permission from the COTP or a designated representative. They may be contacted through Vessel Traffic Service (VTS) on channels 65A or 13 VHF–FM, or by telephone at (409) 719–5070.

(3) Permission to transit through the bridge will be based on weather, tide and current conditions, vessel size, horsepower, and availability of assist vessels. All persons and vessels permitted to enter this temporary safety zone shall comply with the lawful orders or directions given to them by COTP or a designated representative.

(4) Intentional or unintentional contact with any part of the bridge or associated structure, including fendering systems, support columns, spans or any other portion of the bridge, is strictly prohibited. Report any contact with the bridge or associated structures immediately to VTS Port Arthur on channels 65A, 13 or 16 VHF–FM or by telephone at (409) 719–5070.

(d) *Informational broadcasts.* The Coast Guard will inform the public through public of the effective period of this safety zone through VTS Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: July 22, 2019.

Jacqueline Twomey,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2019–18359 Filed 8–26–19; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2019–11; Order No. 5205]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Six). This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 20, 2019.

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:

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I. Introduction
II. Proposal Six
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I. Introduction

On August 20, 2019, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to the Postal Service's periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Six.

II. Proposal Six

Background. Proposal Six would change the methodology for reporting revenue, pieces and weight for Priority Mail Express International (PMEI) in the Postal Service's Revenue, Pieces and Weight (RPW) report to improve it by incorporating additional census data sources and adjustments at lower levels of detail.[2] In Docket No. RM2016–7, the Commission accepted the Postal Service's proposal to redesign the methodology for producing RPW estimates filed quarterly with the Commission for Outbound First-Class Mail International, Outbound Priority Mail International, First-Class Package International Service, Outbound Direct Sacks (M-bags), and Free Mail by harnessing detailed data from improved census systems.[3] Proposal Six seeks to extend this redesigned methodology to PMEI. Petition, Proposal Six at 1–2.

The current PMEI process was designed to provide accurate data at the national level. *Id.* at 2. It combines data from three census systems. *Id.* PostalOne! data are used at the national product level for PMEI permit-imprint activity where data are split between Negotiated Service Agreements (NSA) and non-NSA mailings by product and price group as recorded on Postage Statement PS 3700, Parts G and H. *Id.* PC Postage data are used at the national product level for PMEI NSA activity.[4] Product Tracking and Reporting (PTR)[5] data are used at the national product level for PMEI retail activity. *Id.*

Proposal. The Postal Service states it ''would like to use the proposed census data enhancements to estimate revenue, pieces and weight in RPW for PMEI using the new methodology, which includes much greater detail below the national and price-group level.'' *Id.* at 2–3.

The proposed reporting process would extend the use of PostalOne! and PC Postage census data while adding the use of Point-of-Sale (POS), Click and Ship (CNS), Self-Service Kiosk (SSK) and Contract Postal Unit (CPU) census data. *Id.* at 3. Census data sources used for the proposed PMEI RPW reporting include POS, CNS, SSK, and CPU census revenues, pieces and weight that will be used directly in RPW at the destination-country and product level. PC Postage census data would be used directly in RPW; NSA and non-NSA. All PC Postage census data would be reported at the product and destination-country level. PostalOne! PMEI permit-imprint revenues, pieces and weight would continue to be used directly in the RPW. *Id.*

Rationale and impact. The Postal Service states, ''[t]he accuracy of outbound RPW international product and underlying destination-country reporting can be substantially improved using the proposed PMEI RPW reporting approach.'' *Id.* at 3. It states that it will improve ''the destination-country level

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), August 20, 2019 (Petition). The Postal Service also filed a notice of filing non-public material relating to Proposal Six. Notice of Filing of USPS–RM2019–11/NP1 and Application for Nonpublic Treatment, August 20, 2019.

[2] The RPW system used to develop this report was detailed in witness Pafford's testimony (USPS–T–3) in Docket No. R2006–1. Petition, Proposal Six at 1.

[3] *See* Docket No. RM2016–7, Order Approving Analytical Principles Used in Periodic Reporting (Proposal One), July 17, 2016 (Order No. 3377).

[4] PC Postage is Postal Service approved third-party vendor software that mailers can use to pay for and print their postage using a computer, printer, and internet connection. *Id.*

[5] PTR is the database that stores tracking scan data for all barcoded packages from acceptance to delivery. *Id.*

estimates used by the Postal Service for monitoring business relationships, product performance, and growth opportunities.'' *Id.* at 1. It further states, ''[t]he proposed changes involve the reporting of the outbound international RPW Competitive category of 'Outbound International Expedited Services.' '' *Id.*

The Postal Service attached a public Excel file to the Proposal comparing the FY 2019 Quarter 3 Year-To-Date revenues, volumes and weights using the proposed PMEI method (''Proposed'' column) to the current PMEI method (''Current'' column).[6] Other columns present the amounts and percent changes to the current method. *Id.* The Postal Service notes that ''FY2019 'Total All Revenue' is unchanged, while 'Total All Mail' volume decreases 8.0 million pieces (0.0 percent)'' and that '' 'Total Competitive Revenue' increases $4.8 million or 0.0 percent with a corresponding decrease of $4.8 million or 0.0 percent for 'Total Market Dominant Revenue.' '' *Id.* The Postal Service states, ''[t]here are small changes to domestic products and services that, through operation of the Book Revenue Adjustment Factor (BRAF), are affected by the redistribution of international outbound revenue. The RPW reporting process ensures that the sum of product revenues 'ties out' to Accounting Trial Balance revenue.'' *Id.; see* n.4.

The Postal Service states that the Excel file demonstrates ''competitive international products, 'Outbound International Expedited Services' or PMEI increases $8.7 million (12.0 percent), 0.122 million pieces (14.3 percent), and 0.698 million pounds (14.1 percent).'' *Id.* Additionally, Other Outbound International Mail revenue, pieces, and weight changes amount to 0.0 percent. *Id.* It concludes, '' 'Outbound Priority Mail International' or PMI revenue increases $0.199 million (0.1 percent), while volume and weight remain unchanged.'' *Id.* at 4–5.

The Postal Service states, ''[t]he impact to PMEI reflects changes in the use of census data'' and that ''most of the difference is caused by certain limitations in the PTR reporting system in terms of isolating NSA from non-NSA PC Postage transactions, and the treatment of this in the RPW report process.'' *Id.* at 5. It states that because PTR tracks package counts, individual package revenue and weight are not always available, the proposal switches directly to financial system reporting sources to avoid these issues.[7] The Postal Service concludes that, ''the Proposed PMEI approach will result in the improved reporting of PMEI revenues and volumes both in terms of the level and measures of precision. The new system will also allow for more granularities in the estimates by destination country, thereby providing more information for making international product business decisions.'' *Id.*

III. Notice and Comment

The Commission establishes Docket No. RM2019–11 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Six no later than September 20, 2019. Pursuant to 39 U.S.C. 505, the Commission designates Jennaca D. Upperman as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2019–11 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), filed August 20, 2019.

2. Comments by interested persons in this proceeding are due no later than September 20, 2019.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca D. Upperman to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–18364 Filed 8–26–19; 8:45 am]

BILLING CODE 7710–FW–P

[6] *Id.* at 4. The Postal Service has also separately filed under seal (as Library Reference USPS–RM2019–11/NP1) a restricted version of the Excel impact file that disaggregates data pertaining to competitive products.

[7] The Postal Service states, ''[t]he impacts to 'Other Outbound International Mail' and PMI, as well as ''Other Domestic Ancillary Services'' are unrelated to this Proposal regarding the new approach to PMEI, and instead reflect Quarter 1 updates to PostalOne! data and the treatment of domestic NSA extra services, respectively.'' *Id.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0082 FRL–9998–91–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonable Available Control Technology for the 2008 Ozone National Ambient Air Quality Standard

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 Pennsylvania Department of Environmental Protection (PADEP) on behalf of the City of Philadelphia, Department of Public Health, Air Management Services (AMS) for the purpose of satisfying the volatile organic compound (VOC) reasonably available control technology (RACT) requirements for source categories covered by control technique guidelines (CTGs) under the 2008 8-hour ozone national ambient air quality standard (NAAQS). The Commonwealth of Pennsylvania will address RACT for major stationary sources of VOCs and oxides of nitrogen (NO_X) for Philadelphia County in future SIP submissions. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 26, 2019.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2019–0082 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*

on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Gaige, Air Quality Analysis Branch (3AD40), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5676. Ms. Gaige can also be reached via electronic mail at *gaige.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 13, 2018, PADEP submitted, on behalf of the Philadelphia AMS, a SIP revision addressing the VOC CTG RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS for Philadelphia County (the 2018 VOC CTG RACT Submission for Philadelphia County). This revision to Philadelphia County's portion of the SIP addresses the RACT requirements for sources of VOC emissions within Philadelphia covered by a CTG issued by EPA, in accord with Sections 172(c)(1), 182(b)(2)(A) and (B), and 184(b)(l)(B) of the CAA (42 U.S.C. 7502(c)(1), 7511a(b)(2)(A) and (B), and 7511c(b)(l)(B)) and the implementing regulations for the 2008 Ozone NAAQS (80 FR 12264; March 6, 2015; 40 CFR part 51, subpart AA), in order to help Philadelphia County attain the 2008 ozone NAAQS. The SIP revision received on August 13, 2018 contained errors with respect to the **Federal Register** citations and approval dates for certain CTG VOC source categories in Table 1 of the submission. Other CTG VOC source categories were promulgated or otherwise revised since the 2008 Ozone RACT SIP Revision was forwarded to U.S. EPA Region 3. Table 2 of the submission could have been interpreted as including a negative declaration for EPA's 2016 Oil and Gas CTG instead of only EPA's 1983 Oil and Gas CTG. Accordingly, AMS sent, through PADEP, a clarification letter with updated versions of Tables 1 and 2 of the 2008 Ozone RACT SIP Revision to reference current citations and approval dates for all applicable CTG VOC categories. The corrected version of Tables 1 and 2 were attached to a June 28, 2019 letter sent by AMS, through PADEP, to EPA. EPA received an updated submission from PADEP on July 26, 2019. Both submissions can be found in the docket.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO_X in the presence of sunlight. In order to reduce ozone concentrations, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in areas designated as nonattainment for ozone. Among effective control measures, RACT controls significantly reduce VOC and NO_X emissions from major stationary sources. Philadelphia County is part of the Philadelphia-Wilmington-Atlantic City ozone nonattainment area (NAA) and was designated marginal nonattainment under the 2008 8-hour ozone NAAQS. SIPs for NAAs are subject to the general nonattainment requirements in title 1, part D, subpart 1, and the additional requirements for ozone nonattainment areas in part D, subpart 2.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] CAA section 172(c)(1) provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. See definition of ''major stationary source'' in CAA sections 182 (c), (d) and (e), 182(f), and 302. CAA sections 182(b)(2) and 182(f)(1) require states with moderate (or worse) ozone nonattainment areas to implement RACT controls on all stationary sources and source categories covered by a CTG document issued by EPA (section 182(b)(A), (B)), and on all major stationary sources of VOC and NO_X emissions located in the area (section 182(b)(2)(C) and 182(f)(1)).[2] EPA's CTGs establish presumptive RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs), primarily for NO_X source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. CAA section 183(c) requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. EPA issued 11 new CTGs from 2006 through 2008 for a total of 44 CTGs issued since November 1990. States with ozone nonattainment areas are required to implement RACT for the source categories covered by CTGs through the SIP. Source categories that are not covered by the CTGs are termed non-CTG sources. The non-CTG sources in Philadelphia County are not covered by this SIP revision.

In addition to the requirements of section 182, CAA section 184(a) established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District of Columbia, and required that additional measures be taken in OTR states to reduce ozone. The entire Commonwealth of Pennsylvania, including Philadelphia County, is part of the OTR and, therefore, must also comply with the additional RACT requirements in CAA section 184(b)(1)(B) and (2). Only section 184(b)(1)(B) is relevant to this particular SIP revision because it requires the implementation of RACT in OTR states for all sources of VOC covered by a CTG, regardless of whether the VOC source is in a nonattainment area.[3] Because the Philadelphia-Wilmington-Atlantic City Area is designated as marginal nonattainment, the requirement to adopt RACT on all sources covered by a CTG would not apply in Philadelphia County without the additional OTR requirement in section 184(b)(1)(B).

B. Philadelphia County, Pennsylvania's Ozone RACT History

Philadelphia County, Pennsylvania has been subject to the CAA RACT

[1] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.'' *See also* 44 FR 53761, 53762 (September 17, 1979).

[2] As stated in this rulemaking action, this SIP is only addressing sources subject to CTGs issued by EPA and is not addressing major sources of VOC or NO_X that are not subject to CTGs.

[3] Section 184(b)(2) requires that major sources of VOC and NO_X in attainment areas in OTR states also comply with the requirements of section 182(b)(2) for moderate nonattainment areas. This SIP revision only addresses VOC sources subject to CTGs in Philadelphia County, so the section 184(b)(2) requirements are not discussed in the proposal.

requirements because of previous ozone nonattainment designations. The Philadelphia-Wilmington-Atlantic City Area (which includes Philadelphia County) was designated as a severe 1-hour ozone NAA. Philadelphia County has implemented numerous RACT controls throughout the County to meet the CAA's RACT requirements under the 1-hour ozone standard.

Under the 1997 8-hour ozone NAAQS, the Philadelphia-Wilmington-Atlantic City Area (which includes Philadelphia County) was designated as a moderate nonattainment area. See 69 FR 23858, 23931 (April 30, 2004). As a result, Philadelphia County continued to be subject to the CAA RACT requirements. Philadelphia County revised and promulgated its RACT regulations and demonstrated that it complied with the 1997 CAA RACT requirements in a SIP revision approved by EPA on June 15, 2016 (81 FR 38992).

Under CAA section 109(d), EPA is required to periodically review and promulgate, as necessary, revisions to the NAAQS to continue to protect human health and the environment. On March 27, 2008, EPA revised the 1997 8-hour ozone standard by lowering the 8-hour standard to 0.075 parts per million (ppm) level (73 FR 16436). On May 21, 2012, EPA finalized attainment/nonattainment designations for the 2008 8-hour ozone NAAQS (77 FR 30087). Under the 2008 8-hour ozone standard, EPA designated Philadelphia County, which remained part of the larger Philadelphia-Wilmington-Atlantic City Area, as marginal nonattainment. However, the entire Commonwealth of Pennsylvania is in the OTR, so pursuant to CAA section 184(b)(1)(B), it is required to address certain CAA RACT requirements by submitting to EPA a SIP revision demonstrating that it implements RACT on all VOC sources in Pennsylvania covered by a CTG.[4]

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). See 80 FR 12264. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In this rule, EPA specifically required that states meet the RACT requirements either (1) through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS, or (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Additionally, states are required to submit a negative declaration if there are no sources in the nonattainment area covered by a specific CTG source category.

II. Summary of SIP Revision

On August 13, 2018, PADEP submitted a SIP revision for Philadelphia County to address the VOC CTG RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS (the 2018 VOC CTG RACT Submission for Philadelphia County). Specifically, Pennsylvania's 2018 VOC CTG RACT Submission for Philadelphia County includes: (1) A certification that for certain categories of sources, previously-adopted VOC RACT controls in the Philadelphia County portion of Pennsylvania's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; and (2) a negative declaration that certain CTG sources of VOC do not exist in Philadelphia County, PA. This SIP revision does not cover non-CTG sources in Philadelphia County.

Philadelphia County's Regulations, under Philadelphia County AMR V Sections II, III, IV, V, XI, XII, XIII, XV, XVI, and 25 Pa. Code Sections 129.52, 129.52a, 129.52b, 129.52d, 129.52e, 129.55, 129.56, 129.57, 129.58, 129.59, 129.60, 129.62, 129.63, 129.63a, 129.64, 129.67, 129.67a, 129.67b, 129.68, 129.69, 129.71, 129.73, 129.74, 129.77, 129.101–129.107, and 130.701–130.704, contain the VOC CTG RACT controls that were implemented and approved into Pennsylvania's SIP under the 1-hour and 1997 8-hour ozone NAAQS. Pennsylvania is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for CTG-covered sources of VOCs in Philadelphia County, PA. PADEP also submitted a negative declaration for the CTGs that have not been adopted due to no affected facilities in Philadelphia County. More detailed information on these provisions as well as a detailed summary of EPA's review can be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2019–0082.

III. Proposed Action

EPA has reviewed Pennsylvania's 2018 VOC CTG RACT Submission for Philadelphia County and is proposing to approve Pennsylvania's SIP revision to the Philadelphia County portion of the SIP on the basis that Philadelphia County, PA has met the VOC RACT requirements for all sources covered by VOC CTGs as set forth by CAA sections 182(b) and 184(b)(2). EPA is proposing to find that Pennsylvania's SIP revision satisfies the 2008 8-hour ozone NAAQS RACT requirements for sources covered by CTGs issued prior to July 20, 2014 in Philadelphia County, PA through (1) certification that previously adopted RACT controls in the Philadelphia County portion of the Pennsylvania SIP that were approved by EPA under the 1979 1-hour ozone and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and that they continue to represent RACT; and (2) a negative declaration demonstrating that no facilities exist in Philadelphia County for certain CTG categories.

EPA is proposing to find that Pennsylvania's 2018 VOC CTG RACT Submission for Philadelphia County demonstrates that Philadelphia County has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all stationary sources of VOCs covered by a CTG issued prior to July 20, 2014. EPA is soliciting public comments on the issues discussed in this document relevant to VOC CTG RACT requirements for the Philadelphia County portion of the Pennsylvania SIP for the 2008 ozone NAAQS. These comments will be considered before taking final action.

[4] Because this SIP revision only addresses RACT for sources covered by CTGs in Philadelphia County, the other requirements applicable to major NO_X or VOC sources in OTR states will not be discussed.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, Pennsylvania's 2018 VOC CTG RACT Submission for Philadelphia County, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 16, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2019–18433 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0240; FRL–9998–84–Region 9]

Extreme Area Submission Requirements, Coachella Valley Nonattainment Area; California Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) recently granted a request by the State of California to voluntarily reclassify the Coachella Valley nonattainment area from ''Severe-15'' to ''Extreme'' for the 1997 8-hour ozone national ambient air quality standards (NAAQS) under section 182(b)(3) of the Clean Air Act (CAA). In this action, the EPA is proposing a schedule for the State to submit an Extreme ozone nonattainment area plan and revised title V and new source review (NSR) rules. The EPA is proposing deadlines for submittal of those state implementation plan (SIP) revisions and for implementation of the related control requirements. Under the EPA's proposed schedule, California would be required to submit these elements no later than July 10, 2020 (12 months from the effective date of the area's reclassification). We are also clarifying some language related to tribal areas that was included in our reclassification rule.

DATES: Any comments must arrive by September 26, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0240 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3856 or by email at *kelly.thomasp@epa.gov.*

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

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I. Background

This action concerns SIP revisions for the Coachella Valley portion of Riverside County, California (''Coachella Valley''), upon the area's reclassification to Extreme nonattainment for the 1997 ozone NAAQS. The Coachella Valley is overseen by the South Coast Air Quality Management District (''District'').

Effective June 15, 2004, we classified the Coachella Valley as ''Serious'' nonattainment for the 1997 ozone NAAQS.[1] Our classification of Coachella Valley as a Serious ozone nonattainment area established a requirement that the area attain the 1997 ozone NAAQS as expeditiously as practicable, but no later than eight years from designation, *i.e.,* June 15, 2012. On November 28, 2007, the California Air Resources Board (CARB) voluntarily

[1] 69 FR 23858 (April 30, 2004).

requested that the EPA reclassify the Coachella Valley from Serious to Severe-15. The EPA granted the voluntary reclassification, effective June 4, 2010, establishing a new Severe-15 attainment date of not later than June 15, 2019.[2] On June 11, 2019, CARB submitted a request that the EPA reclassify the Coachella Valley from Severe-15 to Extreme for the 1997 ozone NAAQS. The EPA granted CARB's request for reclassification in a separate action, effective July 10, 2019.[3] As explained in the notice for that action, the EPA's reclassification to Extreme nonattainment applies only to the portions of the Coachella Valley subject to the State's jurisdiction, and the EPA did not reclassify any areas of Indian country within the boundaries of the nonattainment area.[4]

The EPA's reclassification notice recognized a recent decision of the United States Court of Appeals for the District of Columbia Circuit, *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018) (''*South Coast II*''), as it relates to the EPA's obligations for a revoked NAAQS. As described in that notice, the EPA revoked the 1997 ozone NAAQS in 2015, and the Court in *South Coast II* held that the EPA's obligation to reclassify areas failing to meet an attainment date is an anti-backsliding control applicable to the revoked 1997 NAAQS. The notice stated that although the Court did not address voluntary reclassifications requested by states, such reclassifications are consistent with the general scheme for implementing CAA emissions controls to achieve attainment and serve to clarify an area's anti-backsliding obligations with respect to the revoked 1997 NAAQS.[5] This proposal clarifies the anti-backsliding obligations for the Coachella Valley by establishing a schedule for the State to submit the plan elements for an Extreme area.

II. Proposed Action and Public Comment

In this action, we are proposing to require the State to submit SIP revisions to address the requirements resulting from the EPA's reclassification of the Coachella Valley to Extreme nonattainment for the 1997 ozone NAAQS by no later than July 10, 2020, one year from the effective date of the reclassification. The State's submittal must include an Extreme area plan that addresses the requirements of CAA section 182(e) as well as revisions to the NSR and title V rules applicable to the area. In this proposed action, we are also clarifying one aspect of our July 10, 2019 rule related to Indian country of the Santa Rosa Band of Cahuilla Indians.

A. Extreme Area Plan Requirements

Under CAA section 182(e), an attainment plan for an Extreme area must include the elements required for a Severe area as well as additional plan elements for an Extreme area.[6] Where applicable, the plan elements should reflect the reduction of the major source threshold under 182(e) from 25 tons per year for a Severe area to 10 tons per year for an Extreme area. The requirements for an Extreme area plan include, but are not limited to: (1) An attainment demonstration; (2) a reasonable further progress (RFP) demonstration showing ozone precursor reductions of at least 3 percent per year until the attainment date;[7] (3) additional reasonably available control technology (RACT) rules to address sources subject to the lower Extreme area major source threshold; (4) use of clean fuels or advanced control technology for boilers as described at CAA section 182(e)(3); and (5) contingency measures.

For the Coachella Valley, the District and State will need to submit a plan that includes all elements required under CAA section 182(e), and that demonstrates attainment of the 1997 ozone NAAQS as expeditiously as practicable but no later than June 15, 2024. The plan should identify adopted measures sufficient to make the required RFP and attainment demonstrations for the area.[8]

For areas initially designated Extreme, the CAA provides 4 years from the date of designation to submit the required SIP elements to the EPA. The statutory deadline for SIP submissions for areas initially designated as Extreme for the 1997 ozone NAAQS passed in June 2008. Under its general CAA section 301(a) authority, the EPA is establishing a new deadline of July 10, 2020, *i.e.,* 12 months from the effective date of reclassification, for the State to submit SIP revisions addressing the Extreme area requirements for the Coachella Valley. This timeframe is consistent with how the EPA has handled establishing SIP submission deadlines under CAA section 182(i) for ozone areas reclassified by operation of law under CAA section 181(b)(2).[9] The EPA has also considered that for pollutants other than ozone, the Clean Air Act provides twelve months for states to submit revised attainment demonstration SIP submissions when an area fails to attain by its attainment date.[10] This timeframe generally allows for the time necessary for states and local air districts to finish reviews of available control measures, adopt revisions to necessary attainment strategies, address other SIP requirements and complete the public notice process necessary to adopt and submit timely SIP revisions.

The RACT controls for an area classified as Extreme for the 1997 ozone NAAQS should be implemented before the ozone season of the classification's attainment year, *i.e.,* the ozone season immediately preceding the maximum attainment date. For the Coachella Valley, which has a year-round ozone season and a June 15, 2024 Extreme area attainment date, RACT controls must be implemented by January 1, 2023.

B. NSR and Title V Program Revisions

In addition to the required plan revisions discussed in section II.A of this notice, the State must submit, by July 10, 2020, revised District NSR rules for the Coachella Valley that reflect the Extreme area definitions for new major sources and modifications, and to increase the offset ratios for these sources and modifications consistent with CAA section 182(e)(1) and (2). Under CAA section 182(e)(1), the volatile organic compound and oxides

[2] 75 FR 24409 (May 5, 2010). Under CAA section 181(b)(3), the EPA must approve a state's request for voluntary reclassification to a higher ozone nonattainment classification.

[3] 84 FR 32841 (July 10, 2019).

[4] *Id.*

[5] *Id.*

[6] CAA section 182(e) specifically excludes certain Severe area requirements from the Extreme area requirements, *e.g.,* CAA section 182(c)(6), (7), and (8).

[7] CAA section 182(e) does not allow the state to use the provision at CAA section 182(c)(2)(B)(ii) that allows RFP reductions of less than 3 percent per year based on additional demonstrations.

[8] CAA section 182(e)(5) allows the EPA to approve an Extreme area attainment demonstration based on anticipated development of new control techniques or improvement of existing control technologies. This option requires a state to demonstrate that provisions based on these new techniques or improvements are not necessary to meet emission reductions required within the first 10 years after an area's designation as Extreme, and to submit, at least three years before implementation of the proposed provisions relying on new technology, contingency measures to be implemented in case the anticipated technologies do not achieve the planned reductions. Based on the shorter timeline to attainment (roughly 5 years from reclassification), use of CAA section 182(e)(5) is not appropriate in this instance.

[9] See, *e.g.,* 75 FR 79302 (Dec. 20, 2010) (Dallas-Ft. Worth, Texas, reclassification to Serious for the 1997 8-hour ozone NAAQS); 69 FR 16483 (March 30, 2004) (Beaumont-Port Arthur, Texas, reclassification to Serious for the 1979 1-hour ozone NAAQS); 68 FR 4836 (Jan. 30, 2003) (St. Louis, Missouri, reclassification to Serious for the 1979 1-hour ozone NAAQS).

[10] See CAA section 179(d)(1) (providing 12 months for a state to submit a new attainment demonstration after a determination that the area failed to attain by its attainment date).

of nitrogen offset ratios for major sources and modifications in an Extreme nonattainment area must be at least 1.5 to 1, or at least 1.2 to 1 if the plan requires all existing major sources in the nonattainment area to use best available control technology. Under CAA section 182(e)(2), any change at a major stationary source that results in an increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source is generally considered a modification, subject to additional provisions for emissions increases offset through internal reductions and for equipment that is installed to comply with CAA requirements. The District must also make any changes in its title V operating permits program for the Coachella Valley necessary to reflect the change in the major source threshold from 25 tons per year for Severe areas to 10 tons per year for Extreme areas. The rationale for the EPA's deadline of July 10, 2020 is discussed in Section II.A.

C. Clarification of Indian Country in the Coachella Valley Reclassification

Our July 10, 2019 rule approving the State's request to reclassify the Coachella Valley to Extreme for the 1997 ozone NAAQS applied only to areas under state jurisdiction and did not change the nonattainment classification for any areas subject to tribal jurisdiction. Our rule identified tribes located within the Coachella Valley and indicated that Indian country under the jurisdiction of these tribes would remain classified as Severe-15, including land under the jurisdiction of the Santa Rosa Band of Cahuilla Indians. However, the rule did not mention that the reservation lands of the Santa Rosa Band of Cahuilla Indians includes lands located in both the Coachella Valley and the South Coast ozone nonattainment (''South Coast'') areas. The portion of the Santa Rosa Reservation located in the South Coast is classified as Extreme nonattainment.[11] In this proposal, we reiterate that our reclassification did not change the nonattainment classification of any areas of Indian country and clarify that references to Indian country of the Santa Rosa Band of Cahuilla Indians in our reclassification rule apply only to the portions of the Santa Rosa Reservation located within the Coachella Valley. The portion of the reservation lands of the Santa Rosa Band of Cahuilla Indians located within the South Coast nonattainment area remains classified as Extreme for the 1997 ozone NAAQS. The portion of the reservation lands of the Santa Rosa Band of Cahuilla Indians located within the Coachella Valley nonattainment area remains classified as Serious for the 1997 ozone NAAQS.

We will accept comments from the public on this proposal until September 26, 2019.

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, the timing of the submittal of the Extreme area requirements does not impose a materially adverse impact under Executive Order 12866. For these reasons, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Furthermore, this action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866.

In addition, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed action 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), because the EPA is seeking comment solely on the timing of submittal requirements.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' The reclassification does not apply to tribal areas, and the proposed rule would not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Coachella Valley, and thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

This proposed action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action does not alter the relationship, or the distribution of power and responsibilities established in the Clean Air Act.

This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

As this proposal would set a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs policies, and activities on minority populations and low-income populations in the United States. The EPA believes that this action, which addresses the timing for the submittal of Extreme area ozone planning requirements, does not have disproportionately high and adverse human health or environmental health effects on minority populations, low-income populations and/or indigenous

[11] See 75 FR 24409, 24416 (May 5, 2010).

peoples, as specified in Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Ozone.

Dated: August 14, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–18432 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2019–0168; FRL–9999–00–OAR]

Section 610 Review of ''Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program''; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of extension of public comment period.

SUMMARY: On May 22, 2019, the U.S. Environmental Protection Agency (''EPA'') published an entry in the Spring 2019 Unified Agenda of Regulatory and Deregulatory Actions announcing that EPA will review the rulemaking ''Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program'' pursuant to section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine if the provisions that could affect small entities should be continued without change, should be rescinded, or amended to minimize adverse economic impacts on small entities. The entry invited public comment on this proposal via the established docket on *Regulations.gov* by August 22, 2019—90 days after publication of the Spring 2019 Unified Agenda of Regulatory and Deregulatory Actions. On August 15, 2019, EPA received a request from the Small Refiners Coalition to extend the comment period by 30 days to allow its members to provide thorough comments and data. On August 16, 2019, EPA received a similar request from the Small Retailers Coalition. EPA is extending the deadline for written comments an additional 30 days to September 23, 2019.

DATES: Comments must be received on or before September 23, 2019.

ADDRESSES: You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0168, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (our preferred method) Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: Submit your comments on EPA's section 610 review referenced above, identified by Docket ID No. EPA–HQ–OAR–2019–0168, at *http://www.regulations.gov* (our preferred method), or the other methods identified above. Once submitted, comments cannot be edited or removed from the docket. 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://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jessica Mroz, Office of Transportation and Air Quality, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–1094; email address: *mroz.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA rulemaking that is the subject of this review was published on March 26, 2010, at 75 FR 14670. For the reasons noted above, the public comment period for this review will now end on September 23, 2019.

Dated: August 20, 2019.

Sarah Dunham,

Director, Office of Transportation and Air Quality.

[FR Doc. 2019–18435 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0766; FRL–9996–03]

RIN 2070–AJ28

Tolerance Crop Grouping Program V

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to its pesticide tolerance crop grouping regulations, which allow the establishment of tolerances for multiple related crops based on data from a representative set of crops. EPA is proposing to revise one commodity definition, add three new commodity definitions, and amend the current herbs and spices crop group currently provided in Crop Group 19. The crops in the current ''Crop Group 19: Herbs and Spices Group'' will be separated into two new crop groups, ''Crop Group 25: Herb Group'' and ''Crop Group 26: Spice Group.'' Once final, these revisions will increase the utility and benefit of the crop grouping system for producers and other stakeholders involved in commercial agriculture. This is the fifth in a series of planned crop group updates expected to be prepared over the next several years.

DATES: Comments must be received on or before October 28, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0766, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Prasad Chumble, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number 703–347–8367; email address: *chumble.prasad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Legal Authority

EPA is initiating this rulemaking to amend the existing crop grouping regulations under section 408(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which authorizes EPA to establish ''general procedures and requirements to implement [section 408].'' 21 U.S.C. 346a(e)(1)(C). Under section 408 of the FFDCA, EPA is authorized to establish tolerances for pesticide chemical residues in food. EPA establishes tolerances for each pesticide based on the potential risks to human health posed by that pesticide. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural commodities and processed foods. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group.

B. Does this action apply to me?

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

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

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. Tolerance-Setting Requirements and Petitions From the Interregional Research Project Number 4 (IR–4) To Expand the Existing Crop Grouping System

EPA is authorized to establish tolerances, which are the maximum levels of pesticide chemical residues that may be in or on food commodities, under section 408 of the FFDCA (21 U.S.C. 346a). EPA establishes pesticide tolerances only after determining that aggregate exposure to the pesticide is considered safe. The United States Food and Drug Administration and the United States Department of Agriculture (USDA) enforce compliance with tolerance limits.

Traditionally, tolerances are established for a specific pesticide and commodity combination. However, under EPA's crop grouping regulations (40 CFR 180.40 and 180.41), a single tolerance may be established that applies to a group of related commodities. For example, ''Crop Group 26: Spice Group'' is proposed to include 166 commodities. Crop group tolerances may be established based on residue data from designated representative commodities within the group. Representative commodities are selected based on EPA's determination that they are likely to bear the maximum level of residue that could occur on any crop within the group. Using the same example, the proposed representative commodities for Crop Group 26 is a choice of either celery seed or dill seed. Once a crop group tolerance is established, the tolerance level applies to all commodities within the group.

This proposed rule is the fifth in a series of planned crop group amendments expected to be completed over the next several years. The previous four crop group amendment rules were finalized on December 7, 2007 (72 FR 69150); December 8, 2010 (75 FR 76284); August 22, 2012 (77 FR 50617); and May 3, 2016 (81 FR 26471) (Refs. 1, 2, 3, and 4, respectively). Specific information and details regarding the history of the crop group regulations, the previous amendments to the regulations, and the process for amending crop groups can be found in the **Federal Register** of May 23, 2007 (Ref. 5) and in the docket for this action under docket identifier EPA–HQ–OPP–2006–0766 at *http://regulations.gov.* Specific information regarding how the Agency implements crop group amendments can be found in 40 CFR 180.40(j).

The proposed changes identified in this action have been informed by a petition developed by the International Crop Grouping Consulting Committee (ICGCC) workgroup and submitted to EPA by a nation-wide cooperative project, the Interregional Research Project Number 4 (IR–4) (Ref. 6). This petition and the supporting monographs, as well as EPA's analyses of the petitions (Refs. 7, 8, and 9), are included in the docket for this action. Additional petitions seeking amendments and changes to the crop grouping regulations (40 CFR 180.40 and 180.41) from the ICGCC workgroup and IR–4 have been submitted and are being evaluated by EPA.

B. Regulatory Burden Reductions and Cost Savings Achieved Through the Expansion of the Existing Crop Grouping System

In 2007, EPA prepared an Economic Analysis (EA) of the potential costs and benefits associated with the first proposed rule issued in this series of updates, entitled ''Economic Analysis Proposed Expansion of Crop Grouping Program'' (Ref. 10). EPA considers the findings of the 2007 EA to apply to each subsequent crop group rulemaking, including this proposal, due to the similarity in purpose and scope of each of those rulemakings.

As discussed in the 2007 EA, EPA believes that crop grouping rulemakings are burden-reducing and cost-saving regulations. However, the impacts in the 2007 EA were measured primarily on a qualitative basis. For example, the crop grouping rules provide for greater sharing of data by permitting the results from a magnitude of residue field trial studies in one crop to be applied to other, similar crops. The primary beneficiaries are minor crop producers and pesticide registrants. Minor crop producers benefit because lower registration costs will encourage more products to be registered on minor crops, providing additional tools (*i.e.,* pesticides) for pest control. Pesticide registrants are expected to benefit as expanded markets for pesticide products will lead to increased sales. Additionally, the IR–4, which is publicly funded, is also expected to benefit from this rule as it will help IR–4 use its resources more efficiently in its

efforts to ensure that minor or specialty crop growers have access to legal, registered uses of essential pest management tools such as pesticides and biopesticides. The Agency is also expected to benefit from broader operational efficiency gains, which result from fewer emergency pesticide use requests from specialty crop growers, the ability to conduct risk assessment based on crop groupings, greater ease of establishing import tolerances, greater capacity to assess risks of pesticides used on crops not grown in the United States, further harmonization of crop classification and nomenclature, harmonized commodity import and export standards, and increased potential for resource sharing between EPA and other pesticide regulatory agencies.

While the 2007 EA provides a qualitative assessment of the benefits of the crop grouping rulemaking activities, EPA has developed a new burden reduction and cost savings assessment specific to the crop group amendments proposed in this rule, entitled ''Burden Reduction from the Proposed Expansion of Crop Grouping Program'' (Ref. 11). Although there are several uncertainties in the evaluation, for this proposed rule, EPA estimates that the cost savings from these proposed amendments to be approximately $55.1 million annually. The Agency estimates that the cost savings from creating the new herb group and expanding the commodities within it to be approximately $38.4 million annually. The Agency also estimates that the cost savings from the creation of a new spice group and the expansion of the commodities within it to be approximately $16.7 million annually.

While EPA's proposal estimates cost savings of $55.1 million, these estimates are based solely on the number of field trials potentially avoided by the crop grouping amendments being proposed. This limitation means that other sources of value to society, such as making it easier to register pesticides for minor herb or spice crop uses, are not captured in these estimates. While easier registration of pesticides would have value to growers, who would then have access to more means of pest control, this benefit is not quantitatively included in the value estimated by the reduced cost of field trials. Additionally, there is a potential for overestimation when using the value of reduced field trial costs to estimate the cost savings of this rule. Many of these crops may have never been the subject of a tolerance petition that required a field residue trial. Therefore, even if there is a demand for a pesticide on one of the herb or spice crops after a tolerance is granted, it does not reflect an actual savings, but merely a potential savings if a registrant or IR–4 were planning to submit field trial residue data to support a tolerance petition.

EPA's full analysis on the estimated burden reductions and cost savings is provided in the docket for this action at regulations.gov using Docket ID EPA–HQ–OPP–2006–0766. EPA welcomes feedback on the assumptions made in developing these estimates, as well as any additional information that may help the Agency to refine these estimates.

C. International Efforts and Considerations

1. *North American Free Trade Agreement (NAFTA) partner involvement in the proposal.* EPA's Office of Pesticide Programs' Chemistry Science Advisory Council (ChemSAC), an internal Agency peer review committee, provided detailed analyses (Ref. 7, 8, and 9) for each proposed crop group to IR–4, Canada's Pest Management Regulatory Agency (PMRA), and the government of Mexico for their review and comment, and invited these parties to participate in the ChemSAC meeting to finalize the recommendations for each petition. The results of the ChemSAC meeting finalizing the recommendations for proposal in this action are provided in the docket (Ref. 12).

PMRA has indicated that it will, in parallel with the United States effort and under the authority of Canada's Pest Control Products (PCP) Act (2002), establish equivalent crop groups. Additionally, once the new crop groups become effective in the United States, Mexico will have them as a reference for the establishment of maximum residue limits (MRLs) in Mexico.

2. *Relationship of proposal to Codex activities.* When Codex establishes MRLs for a pesticide chemical residue and EPA is not establishing tolerances at that same level, section 408 of the FFDCA calls for EPA to provide an explanation for its reasons for departing from that Codex level. In implementing this provision, EPA works to harmonize tolerance determinations with a Codex MRL whenever possible. This activity facilitates free trade and international movement of United States-produced goods. Further, since Canada is a key trading partner for United States agriculture, EPA also works closely with the Canadian pesticide registrar and similarly works to establish harmonized pesticide tolerance levels with Canada. Both Canada and Codex have adopted their own crop group schemes that are synchronized with and complement the efforts and goals of the crop grouping rulemaking efforts.

3. *Policy for establishing import tolerances for individual spices.* While not directly related to the proposed crop groups, this paragraph summarizes a recent EPA policy that relates to establishing ''import tolerances'' for spice commodities. In 2017, EPA instituted a policy of establishing ''import tolerances'' for pesticide residues based on monitoring data as a substitute for crop field trial residue data (Ref. 13). Because most spices are not grown in the United States, getting data from domestic field trials to support the establishment of tolerances for individual spices grown primarily overseas or the current spice subgroup is extremely unlikely. Establishing individual tolerances for pesticide residues on imported spices using monitoring data is consistent with current Codex practice and is expected to adequately cover pesticide residues in spices moving through the channels of trade. It should be noted, however, that data on the representative commodity of either dill seed or celery seed would still be necessary to support the establishment of a group 26 tolerance.

D. Scheme for Organization of Revised and Pre-Existing Crop Groups

EPA has amended the generic crop group regulations to include an explicit scheme for how revised crop groups will be organized in the regulations.

In brief, the current regulations at § 180.40(j) specify that when a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will retain the pre-existing crop group in 40 CFR180.41 and insert the new, related crop group immediately after the pre-existing crop group in the Code of Federal Regulations (CFR). Although EPA will initially retain pre-existing crop groups that have been superseded by new crop groups, 40 CFR180.41(j) states that EPA will not establish new tolerances under the pre-existing groups and that EPA will convert tolerances for any pre-existing crop groups to tolerances with the coverage of the new crop group. Conversions to revised crop groups are being implemented through the registration review process and in the course of establishing new tolerances for a pesticide.

As explained in Unit III.A., EPA believes it would benefit growers of herbs and spices to create two completely new and separate crop groups rather than to follow the 40 CFR180.41(j) process to create new crop

group 19–19 for Herbs and Spices. As a result, the proposal to separate Crop Group 19 into Crop Groups 25 and 26, as discussed in Unit III, does not fully follow the process described in § 180.40(j). The current process does not adequately address the separation of an existing crop group into two or more crop groups in order to expand and clarify the coverage of commodities, nor do the proposals follow the naming or numbering conventions established in 40 CFR180.40(j). Therefore, to recognize that different processes may be appropriate in situations where an existing crop group may need to be separated into two or more distinct crop groups, EPA is proposing to revise paragraph (j) to outline how it intends to implement these types of crop group amendments.

III. Specific Proposed Revisions

This unit explains the proposed amendments to the crop group regulations.

A. Separation of Herbs and Spices in Crop Group 19: Herbs and Spices

EPA is proposing to separate the current ''Crop Group 19: Herbs and Spices Group'' into two separate crop groups, which will be the proposed ''Crop Group 25: Herb Group'' and ''Crop Group 26: Spice Group.'' Proposed Crop Groups 25 and 26 are discussed in more detail in the following sections of this unit. In accordance with the process outlined in 40 CFR180.40(j), Crop Group 19 will be retained in the CFR until all the tolerances for the pre-existing Crop Group 19 and its associated subgroups have been updated to comply with the newly proposed crop groups.

Separating the current herbs and spices crop group into a separate herb crop group and a spice crop group will benefit herb and spice growers. Combining the two sets of commodities together and requiring residue data on both herb and spice representative commodities has limited the establishment of Crop Group 19 tolerances because herb growers do not want to or cannot develop residue data on the spice representative commodities and vice versa for spice growers. Separating these groups will benefit herb growers by allowing them to submit representative crop data that reflects the commodities they produce and similarly, the separation will benefit spice growers.

A separate herb crop group and appropriate subgroups will provide a benefit to herb growers, as well as botanical herbs grown for medicinal purposes, since the representative commodities will only be herbs with similar characteristics. Also, a separate crop group for herbs allows for the subdivision of dried and fresh herbs into subgroups, which will be beneficial to herb growers because of the different practices for growing herbs for the fresh market and for the dried markets. As a result, these changes will make available new pesticides not previously available for crop protection for these herb commodities, and the tolerances established under the proposed crop groups and subgroups will be a better reflection of their crops. Similarly, a separate spice crop group will allow spices to be placed in a crop group that is more reflective of their edible parts and will provide a benefit to spice growers, as well as botanical spices grown for medicinal purposes, since the representative commodities will only be spices with similar uses and commonly grown in the United States.

Finally, separating herbs and spices into two crop groups will also help in harmonization with Codex which has two separate crop groups, one for herbs and one for spices.

B. Crop Group 25: Herb Group

EPA is proposing to establish a new crop group, entitled ''Crop Group 25: Herb Group.'' The following paragraphs describes this new crop grouping in more detail.

1. *Commodities.* EPA proposes to include the following 317 commodities in Crop Group 25: Agrimony, fresh leaves, *Agrimonia eupatoria* L.; Agrimony, dried leaves, *Agrimonia eupatoria* L.; Angelica, fresh leaves, *Angelica archangelica* L.; Angelica, dried leaves, *Angelica archangelica* L.; Angelica, fragrant, fresh leaves, *Angelica dahurica* (Hoffm.) Benth & Hook. F. ex Franch. & Sav.; Angelica, fragrant, dried leaves, *Angelica dahurica* (Hoffm.) Benth & Hook. F. ex Franch. & Sav.; Applemint, fresh leaves, *Mentha suaveolens* Ehrh.; Applemint, dried leaves, *Mentha suaveolens* Ehrh.; Avarum, fresh leaves, *Senna auriculata* (L.) Roxb.; Avarum, dried leaves, *Senna auriculata* (L.) Roxb.; Balm, fresh leaves, *Melissa officinalis* L.; Balm, dried leaves *Melissa officinalis* L.; Balloon pea, fresh leaves, *Lessertia frutescens* (L.) Goldblatt & J.C. Manning; Balloon pea, dried leaves, *Lessertia frutescens* (L.) Goldblatt & J.C. Manning; Barrenwort, fresh leaves, *Epimedium grandiflorum* C. Morren; Barrenwort, dried leaves, *Epimedium grandiflorum* C. Morren; Basil, fresh leaves, *Ocimum basilicum* L.; Basil, dried leaves, *Ocimum basilicum* L.; Basil, American, fresh leaves, *Ocimum americanum* L; Basil, American, dried leaves, *Ocimum americanum* L.; Basil, Greek, fresh leaves, *Ocimum minimum* L.; Basil, Greek, dried leaves, *Ocimum minimum* L.; Basil, holy, fresh leaves, *Ocimum tenuiflorum* L.; Basil, holy, dried leaves, *Ocimum tenuiflorum* L; Basil, lemon, fresh leaves, *Ocimum x citriodorum* Vis.; Basil, lemon, dried leaves, *Ocimum x citriodorum* Vis.; Basil, Russian, fresh leaves, *Ocimum gratissimum* L.; Basil, Russian, dried leaves, *Ocimum gratissimum* L.; Bay, fresh leaves, *Laurus nobilis* L.; Bay, dried leaves, *Laurus nobilis* L.; Bisongrass, fresh leaves, *Anthoxanthum nitens* (Weber) Y. Schouten & Veldkamp; Bisongrass, dried leaves, *Anthoxanthum nitens* (Weber) Y. Schouten & Veldkamp; Blue mallow, fresh leaves, *Malva sylvestris* L.; Boneset, fresh leaves, *Eupatorium perfoliatum* L.; Boneset, dried leaves, *Eupatorium perfoliatum* L.; Borage, fresh leaves, *Borago officinalis* L.; Borage, dried leaves, *Borago officinalis* L.; Borage, Indian, fresh leaves, *Plectranthus amboinicus* (Lour.) Spreng.; Borage, Indian, dried leaves, *Plectranthus amboinicus* (Lour.) Spreng.; Burnet, fresh leaves, *Sanguisorba* spp.; Burnet, dried leaves, *Sanguisorba* spp.; Burnet, garden, fresh leaves, *Sanguisorba officinalis* L.; Burnet, garden, dried leaves, *Sanguisorba officinalis* L.; Burnet, salad, fresh leaves, *Sanguisorba minor* Scop.; Burnet, salad, dried leaves, *Sanguisorba minor* Scop.; Butterbur, dried leaves, *Petasites hybridus* (L.) G. Gaertn. et al., *P. frigidus (L.) Fr.;* Calamint, fresh leaves, *Clinopodium* spp.; Calamint, dried leaves, *Clinopodium* spp.; Calamint, large-flower, fresh leaves, *Clinopodium grandiflorum* (L.) Kuntze; Calamint, large-flower, dried leaves, *Clinopodium grandiflorum* (L.) Kuntze; Calamint, lesser, fresh leaves, *Clinopodium nepeta* (L.) Kuntze; Calamint, lesser, dried leaves, *Clinopodium nepeta* (L.) Kuntze; Calendula, fresh leaves, *Calendula officinalis* L.; Calendula, dried leaves, *Calendula officinalis* L.; Caltrop, fresh leaves, *Tribulus terrestris* L; Caltrop, dried leaves, *Tribulus terrestris* L; Camomile (Chamomile), fresh leaves, *Chamaemelum* spp. and *Matricaria* spp.; Camomile (Chamomile), dried leaves, *Chamaemelum* spp. and *Matricaria* spp.; Camomile (Chamomile), German, fresh leaves, *Matricaria recutita* L.; Camomile (Chamomile), German, dried leaves, *Matricaria recutita* L.; Camomile (Chamomile), Roman, fresh leaves, *Chamaemelum nobile* (L.) All.; Camomile (Chamomile), Roman, dried leaves, *Chamaemelum nobile* (L.) All.;

Caraway, fresh leaves, *Carum carvi* L; Caraway, dried leaves, *Carum carvi* L.; Cat's claw, dried leaves, *Uncaria tomentosa* (Willd.) DC., *Uncaria guianensis* (Aubl.) J.F. Gmel.; Catnip, fresh leaves, *Nepeta cataria* L.; Catnip, dried leaves, *Nepeta cataria* L.; Catnip, Japanese, fresh leaves, *Schizonepeta multifida* (L.) Briq.; Catnip, Japanese, dried leaves, *Schizonepeta multifida* (L.) Briq.; Celandine, greater, fresh leaves, *Chelidonium majus* L.; Celandine, lesser, fresh leaves, *Ficaria verna* Huds.; Centaury, fresh leaves, *Centaurium erythrarae* Rafn.; Centaury, dried leaves, *Centaurium erythrarae* Rafn.; Chaste tree, fresh leaves, *Vitex agnus-castus* L.; Chaste tree, dried leaves, *Vitex agnus-castus* L.; Chervil, dried leaves, *Anthriscus cerefolium* (L.) Hoffm.; Chinese chastetree, dried leaves, *Vitex negundo* L.; Chinese foxglove, dried leaves, *Rehmannia glutinosa* (Gaertn.) Steud.; Chive, dried leaves, *Allium schoenoprasum* L.; Chive, Chinese, dried leaves, *Allium tuberosum* Rottler ex Spreng.; Cicely, sweet, fresh leaves, *Myrrhis odorata* (L.) Scop.; Cicely, sweet, dried leaves, *Myrrhis odorata* (L.) Scop.; Cilantro, dried leaves, *Coriandrum sativum* L.; Clary, fresh leaves, *Salvia sclarea* L.; Clary, dried leaves, *Salvia sclarea* L.; Coriander, Bolivian, fresh leaves, *Porophyllum ruderale* (Jacq.) Cass.; Coriander, Bolivian, dried leaves, *Porophyllum ruderale* (Jacq.) Cass.; Coriander, Vietnamese, fresh leaves, *Persicaria odorata* (Lour.) Sojak.; Coriander, Vietnamese, dried leaves, *Persicaria odorata* (Lour.) Sojak.; Costmary, fresh leaves, *Tanacetum balsamita* L. subsp. *Balsamita;* Costmary, dried leaves, *Tanacetum balsamita* L. subsp. *Balsamita;* Creat, dried leaves, *Andrographis paniculata* (Burm. f.) Wall. Ex Nees; Culantro, fresh leaves, *Eryngium foetidum* L.; Culantro, dried leaves, *Eryngium foetidum* L.; Curry leaf, fresh leaves, *Bergera koenigii* L.; Curry leaf, dried leaves, *Bergera koenigii* L.; Curryplant, fresh leaves, *Helichrysum italicum* (Roth) G. Don; Cut leaf, fresh leaves, *Prostanthera incisa* R. Br.; Cut leaf, fresh leaves, *Prostanthera incisa* R. Br.; Dillweed, dried leaves, *Anethum graveolens* L.; Dokudami, fresh leaves, *Houttuynia cordata* Thunb.; Echinacea, dried leaves, *Echinacea angustifolia* DC; Epazote, fresh leaves, *Dysphania ambrosioides* (L.) Mosyakin & Clemants; Epazote, dried leaves, *Dysphania ambrosioides* (L.) Mosyakin & Clemants; Eucommia, dried leaves, *Eucommia ulmoides* Oliv; Evening primrose, fresh leaves, *Oenothera biennis* L.; Evening primrose, dried leaves, *Oenothera biennis* L.; Fennel, common, fresh leaves, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare;* Fennel, common, dried leaves, *Foeniculum vulgare* Mill. Subsp. *vulgare* var. *vulgare;* Fennel, Florence, dried leaves, *Foeniculum vulgare* Mill. Subsp. v*ulgare* var. *azoricum* (Mill.) Thell.; Fennel, Spanish, fresh leaves, *Nigella* spp; Fennel, Spanish, dried leaves, *Nigella* spp.; Fenugreek, fresh leaves, *Trigonella foenum-graecum* L.; Fenugreek, dried leaves, *Trigonella foenum-graecum* L; Feverfew, fresh leaves, *Tanacetum parthenium* (L.) Sch. Bip.; Feverfew, dried leaves, *Tanacetum parthenium* (L.) Sch. Bip; Field pennycress, fresh leaves, *Thlaspi arvense* L.; Flowers, edible, fresh, multiple species; Flowers, edible, dried, multiple species; Fumitory, fresh leaves, *Fumaria officinalis* L.; Fumitory, dried leaves, *Fumaria officinalis* L.; Galbanum, dried leaves, *Ferula gummosa* Boiss.; Gambir, fresh leaves, *Uncaria gambir* (W. Hunter) Roxb.; Geranium, fresh leaves, *Pelargonium* spp.; Geranium, dried leaves, *Pelargonium* spp.; Geranium, lemon, fresh leaves, *Pelargonium crispum* (P.J. Bergius) L'Her.; Geranium, lemon, dried leaves, *Pelargonium crispum* (P.J. Bergius) L'Her.; Geranium, rose, fresh leaves, *Pelargonium graveolens* L'Her.; Geranium, rose, dried leaves, *Pelargonium graveolens* L'Her.; Germander, golden, fresh leaves, *Teucrium polium* L.; Germander, golden, dried leaves, *Teucrium polium* L.; Gotu kola, dried leaves, *Centella asiatica* (L.) Urb.; Gumweed, fresh leaves, *Grindelia camporum* Greene; Gumweed, dried leaves, *Grindelia camporum* Greene; Gymnema, dried leaves, *Gymnema sylvestre* (Retz.) Schult.; Gypsywort, fresh leaves, *Lycopus europaeus* L.; Gypsywort, dried leaves, *Lycopus europaeus* L.; Heal-all, fresh leaves, *Prunella vulgaris* L.; Heal-all, dried leaves, *Prunella vulgaris* L.; Honewort, fresh leaves, *Cryptotaenia canadensis* (L.) DC.; Honeybush, dried leaves, *Cyclopia genistoides* (L.) R. Br.; Horehound, fresh leaves, *Marrubium vulgare* L.; Horehound, dried leaves, *Marrubium vulgare* L; Horsemint, fresh leaves, *Mentha longifolia* (L.) Huds.; Horsemint, dried leaves, *Mentha longifolia* (L.) Huds.; Hyssop, fresh leaves, *Hyssopus officinalis* L; Hyssop, dried leaves, *Hyssopus officinalis* L.; Hyssop, anise, fresh leaves, *Agastache foeniculum* (Pursh) Kuntze; Hyssop, anise, dried leaves, *Agastache foeniculum* (Pursh) Kuntze; Jasmine, fresh leaves, *Jasminum officinale* L., *J. odoratissimum* L.; Jasmine, dried leaves, *Jasminum officinale* L., *J. odoratissimum* L.; Labrador tea, fresh leaves, *Rhododendron groenlandicum* (Oeder) Kron & Judd, *R. tomentosum* Harmaja; Labrador tea, dried leaves, *Rhododendron groenlandicum* (Oeder) Kron & Judd, *R. tomentosum* Harmaja; Lavender, fresh leaves, *Lavandula angustifolia* Mill.; Lavender, dried leaves, *Lavandula angustifolia* Mill.; Lemongrass, fresh leaves, *Cymbopogon citratus* (DC.) Stapf; Lemongrass, dried leaves, *Cymbopogon citratus* (DC.) Stapf; Lemon verbena, fresh leaves, *Aloysia citrodora* Palau; Lemon verbena, dried leaves, *Aloysia citrodora* Palau; Lovage, fresh leaves, *Levisticum officinale* W.D.J. Koch; Lovage, dried leaves, *Levisticum officinale* W.D.J. Koch; Love-in-a-mist, fresh leaves, *Nigella damascena* L; Love-in-a-mist, dried leaves, *Nigella damascena* L.; Mamaki, dried leaves, *Pipturus arborescens* (Link) C.B. Rob.; Marigold, fresh leaves, *Tagetes* spp.; Marigold, dried leaves, *Tagetes* spp.; Marigold, African, fresh leaves, *Tagetes erecta* L.; Marigold, African, dried leaves, *Tagetes erecta* L.; Marigold, Aztec, fresh leaves, *Tagetes minuta* L; Marigold, Aztec, dried leaves, *Tagetes minuta* L.; Marigold, French, fresh leaves, *Tagetes patula* L.; Marigold, French, dried leaves, *Tagetes patula* L.; Marigold, Irish lace, fresh leaves, *Tagetes filifolia* Lag; Marigold, Irish lace, dried leaves, *Tagetes filifolia* Lag.; Marigold, licorice, fresh leaves, *Tagetes micrantha* Cav; Marigold, licorice, dried leaves, *Tagetes micrantha* Cav; Marigold, Mexican mint, fresh leaves, *Tagetes lucida* Cav.; Marigold, Mexican mint, dried leaves, *Tagetes lucida* Cav.; Marigold, signet, fresh leaves, *Tagetes tenuifolia* Cav.; Marigold, signet, dried leaves, *Tagetes tenuifolia* Cav.; Marjoram, fresh leaves, *Origanum* spp.; Marjoram, dried leaves, *Origanum* spp; Marjoram, pot, fresh leaves, *Origanum onites* L.; Marjoram, pot, dried leaves, *Origanum onites* L.; Marjoram, sweet, fresh leaves, *Origanum majorana* L.; Marjoram, sweet, dried leaves *Origanum majorana* L.; Marshmallow, fresh leaves, *Althaea officinalis* L.; Marshmallow, dried leaves, *Althaea officinalis* L.; Meadowsweet, fresh leaves, *Filipendula ulmaria* (L.) Maxim.; Meadowsweet, dried leaves, *Filipendula ulmaria* (L.) Maxim.; Mint, fresh leaves, *Mentha* spp.; Mint, dried leaves, *Mentha* spp.; Mint, corn, fresh leaves, *Mentha arvensi*s L.; Mint, corn, dried leaves, *Mentha arvensi*s L.; Mint, Korean, fresh leaves, *Agastache rugosa* (Fisch. & C.A. Mey.) Kun; Mint, Korean, dried leaves, *Agastache rugosa* (Fisch. & C.A. Mey.) Kun; Monarda, fresh leaves, *Monarda* spp.; Monarda, dried leaves, *Monarda*

spp.; Motherwort, fresh leaves, *Leonurus cardiaca* L.; Motherwort, dried leaves, *Leonurus cardiaca* L.; Mountainmint, fresh leaves, *Pycnanthemum* spp; Mountainmint, dried leaves, *Pycnanthemum* spp; Mountainmint, clustered, fresh leaves, *Pycnanthemum muticum* (Michx.) Pers.; Mountainmint, clustered, dried leaves, *Pycnanthemum muticum* (Michx.) Pers.; Mountainmint, hoary, fresh leaves, *Pycnanthemum incanum* Michx.; Mountainmint, hoary, dried leaves, *Pycnanthemum incanum* Michx.; Mountainmint, Virginia, fresh leaves, *Pycnanthemum virginianum* (L.) T. Durand & B.D. Jacks. Ex B.L. Rob. & Fernald; Mountainmint, Virginia, dried leaves, *Pycnanthemum virginianum* (L.) T. Durand & B.D. Jacks. Ex B.L. Rob. & Fernald; Mountainmint, whorled, fresh leaves, *Pycnanthemum verticillatum* (Michx.) Pers.; Mountainmint, whorled, dried leaves, *Pycnanthemum verticillatum* (Michx.) Pers.; Mugwort, fresh leaves, *Artemisia vulgaris* L.; Mugwort, dried leaves, *Artemisia vulgaris* L.; Mulberry, white, dried leaves, *Morus alba* L.; Mullein, fresh leaves, *Verbascum densiflorum* Bertol., *Verbascum* spp.; Mullein, dried leaves, *Verbascum densiflorum* Bertol., *Verbascum* spp.; Nasturtium, fresh leaves, *Tropaeolum* spp; Nasturtium, dried leaves, *Tropaeolum* spp.; Nasturtium, bush fresh leaves, *Tropaeolum minus* L.; Nasturtium, bush dried leaves, *Tropaeolum minus* L.; Nasturtium, garden, fresh leaves, *Tropaeolum majus* L; Nasturtium, garden, dried leaves, *Tropaeolum majus* L; Nettle, fresh leaves, *Urtica dioica* L.; Nettle, dried leaves, *Urtica dioica* L.; Oregano, fresh leaves, *Origanum vulgare* L.; Oregano, dried leaves, *Origanum vulgare* L.; Oregano, Mexican, fresh leaves, *Lippia graveolens* Kunth; Oregano, Mexican, dried leaves, *Lippia graveolens* Kunth; Oregano, Puerto Rico, fresh leaves, *Lippia micromera* Schauer; Oregano, Puerto Rico, dried leaves, *Lippia micromera* Schauer; Oswego tea, fresh leaves, *Monarda didyma* L.; Oswego tea, dried leaves, *Monarda didyma* L.; Pandan leaf, fresh leaves, *Pandanus amaryllifolius,* Roxb.; Pandan leaf, dried leaves, *Pandanus amaryllifolius,* Roxb.; Pansy, fresh leaves, *Viola tricolor* L.; Pansy, dried leaves, *Viola tricolor* L; Paracress, fresh leaves, *Acmella oleracea* (L.) R.K. Jansen; Paracress, dried leaves, *Acmella oleracea* (L.) R.K. Jansen; Parsley, dried leaves, *Petroselinum crispum* (Mill.) Fuss; Pennyroyal, fresh leaves, *Mentha pulegium* L; Pennyroyal, dried leaves, *Mentha pulegium* L.; Peppermint, fresh leaves, *Mentha x piperita* L; Peppermint, dried leaves *Mentha x piperita* L.; Perilla, fresh leaves, *Perilla frutescens* (L.) Britton; Perilla, dried leaves, *Perilla frutescens* (L.) Britton; Rooibos, dried leaves, *Aspalathus linearis* (Burm. f.) R. Dahlgren; Rose, fresh leaves, *Rosa* spp.; Rose, dried leaves, *Rosa* spp; Rosemary, fresh leaves, *Rosmarinus officinalis* L.; Rosemary, dried leaves, *Rosmarinus officinalis* L.; Sage, fresh leaves, *Salvia officinalis* L.; Sage, dried leaves, *Salvia officinalis* L.; Sage, Greek, fresh leaves, *Salvia fruticosa* Mill.; Sage, Greek, dried leaves, *Salvia fruticosa* Mill.; Sage, Spanish, fresh leaves, *Salvia lavandulifolia* Vahl; Sage, Spanish, dried leaves, *Salvia lavandulifolia* Vahl; Savory, summer, fresh leaves, *Satureja hortensis* L.; Savory, summer, dried leaves, *Satureja hortensis* L; Savory, winter, fresh leaves, *Satureja montana* L.; Savory, winter, dried leaves, *Satureja montana* L.; Sorrel, fresh leaves, *Rumex* spp.*;* Sorrel, dried leaves, *Rumex* spp.*;* Sorrel, French, fresh leaves, *Rumex scutatus* L.; Sorrel, French, dried leaves, *Rumex scutatus* L.; Sorrel, garden, fresh leaves, *Rumex acetosa* L.; Sorrel, garden, dried leaves, *Rumex acetosa* L.; Southernwood, fresh leaves, *Artemisia abrotanum* L.; Southernwood, dried leaves, *Artemisia abrotanum* L.; Spearmint, fresh leaves, *Mentha spicata* L.; Spearmint, dried leaves, *Mentha spicata* L.; Spearmint, Scotch, fresh leaves, *Mentha x gracilis* Sole; Spearmint, Scotch, dried leaves, *Mentha x gracilis* Sole; Spotted beebalm, fresh leaves, *Monarda punctata* L.; Spotted beebalm, dried leaves, *Monarda punctata* L.; Squaw vine, dried leaves, *Mitchella repens* L.; St. John's Wort, dried leaves, *Hypericum perforatum* L.; Stevia, dried leaves, *Stevia rebaudiana* (Bertoni) Bertoni; Swamp leaf, fresh leaves, *Limnophila chinensis* (Osbeck) Merr.; Tansy, fresh leaves, *Tanacetum vulgare* L; Tansy, dried leaves, *Tanacetum vulgare* L.; Tarragon, fresh leaves, *Artemisia dracunculus* L.; Tarragon, dried leaves, *Artemisia dracunculus* L.; Thyme, fresh leaves, *Thymus* spp.; Thyme, dried leaves, *Thymus* spp.; Thyme, creeping, fresh leaves, *Thymus serpyllum* L; Thyme, creeping, dried leaves, *Thymus serpyllum* L.; Thyme, lemon, fresh leaves, *Thymus ×citriodorus* (Pers.) Schreb.; Thyme, lemon, dried leaves, *Thymus ×citriodorus* (Pers.) Schreb.; Thyme, mastic, fresh leaves, *Thymus mastichina* (L.) L.; Thyme, mastic, dried leaves, *Thymus mastichina* (L.) L.; Toon, Chinese, fresh leaves, *Toona sinensis* (A. Juss.) M. Roem.; Toon, Chinese, dried leaves, *Toona sinensis* (A. Juss.) M. Roem.; Vasaka, dried leaves, *Justicia adhatoda* L.; Veronica, fresh leaves, *Veronica officinalis* L.; Violet, fresh leaves, *Viola odorata* L.; Violet, dried leaves, *Viola odorata* L.; Watermint, fresh leaves, *Mentha aquatica* L; Watermint, dried leaves, *Mentha aquatica* L.; Waterpepper, fresh leaves, *Persicaria hydropiper* (L.) Delarbre; Wild bergamot, fresh leaves, *Monarda fistulosa* L.; Wild bergamot, dried leaves, *Monarda fistulosa* L.; Wintergreen, fresh leaves, *Gaultheria procumbens* L.; Wintergreen, dried leaves, *Gaultheria procumbens* L.; Wood betony, dried leaves, *Stachys officinalis* (L.) Trevis.; Woodruff, fresh leaves, *Galium odoratum* (L.) Scop.; Woodruff, dried leaves, *Galium odoratum* (L.) Scop.; Wormwood, fresh leaves, *Artemisia absinthium* L; Wormwood, dried leaves, *Artemisia absinthium* L.; Wormwood, Roman, fresh leaves, *Artemisia pontica* L.; Wormwood, Roman, dried leaves, *Artemisia pontica* L.; Yarrow, fresh leaves, *Achillea millefolium* L.; Yarrow, dried leaves, *Achillea millefolium* L.; Yellow gentian, fresh leaves, *Gentiana lutea* L.; Yellow gentian, dried leaves, *Gentiana lutea* L.; Yerba santa, fresh leaves, *Eriodictyon californicum* (Hook. & Arn.) Torr.; Yerba santa, dried leaves, *Eriodictyon californicum* (Hook. & Arn.) Torr.; Yomogi, fresh leaves, *Artemisia princeps* L.; Yomogi, dried leaves, *Artemisia princeps* L. Also included are cultivars, varieties, and hybrids of these commodities.

The 317 members of the new Crop Group 25 are proposed based on similarities of growth habits as well as herbs being either fresh or dried leaves, similar pest problems, sources of essential oil, lack of animal feed items, comparison of established tolerances, and for international harmonization purposes. This new Crop Group 25 would include all the herbs from the current Crop Group 19 with the following exceptions:

- Crop Group 19 and the herb subgroup 19A include both fresh and dried forms of chive (*Allium schoenoprasum*) and chive, Chinese (*Allium tuberosum),* whereas the proposed Crop Group 25 and dried herb sugroup 25B include only the dried forms of those chives. In 2007, EPA determined that pesticide residues on the fresh forms of chives would be similar to other bulb vegetable commodities and included them in Crop Group 3–07 (Ref. 1). To avoid dual coverage, EPA is removing the fresh forms of these chives from the herb group (crop group 25) and subgroup 25A.
- Crop Group 19 and the herb subgroup 19A include both the fresh

and dried forms of coriander (cilantro or Chinese parsley leaf) (*Coriandrum sativum*) and dillweed (*Anethum graveolens* L.), whereas the proposed group and herb subgroup 25B include only the dried forms. In 2016, EPA determined that pesticide residues on the fresh forms of these commodities would be similar to other leafy vegetables and included them in Crop Group 4–16 (Ref. 4). To avoid dual coverage, EPA is removing the fresh forms of these chives from the herb group (crop group 25) and subgroup 25A.

• Although Crop Group 19 and herb subgroup 19A list rue (*Ruta graveolens*) as an herb, EPA is proposing to move rue to the new spice Crop Group 26. The reason for this modification is that rue is—due to similar crop growth, harvesting stages, pest pressures, and pesticide use patterns—expected to have pesticide residues more similar to other spices.

Adding these herb commodities into a separate herb group will benefit growers by enabling the use of pesticides not previously available for crop protection. Many minor herb orphan crops have become more popular in some countries and areas today than they were at the time that Crop Group 19 was established. Increased globalization of herbs in cooking in the United States has resulted in additional herbs to be enjoyed worldwide. Some of these ''minor'' crops have great potential to be grown on a larger scale in some areas in the future due to their unique nutritional and medicinal values. Because the demand for herbs keeps increasing in the United States, these crops may provide local market growers new revenue opportunities for fresh herbs with high returns per acre. Also, this crop group regulation will facilitate the establishment of pesticide tolerances for numerous pesticides that are needed to control a wide diversity of herb pests, as well as to develop integrated pest management (IPM) programs to incorporate reduced risk pesticides, organic and biopesticides, and cultural methods to reduce the development of pesticide resistance.

Being included in a crop group means that individual tolerances do not need to be established for each commodity nor does residue data need to be generated for each of the individual commodities. Allowing EPA's risk assessments to focus on the representative crop is reliable and efficient.

2. *Representative commodities.* EPA proposes the following commodities as representative commodities for the new Crop Group 25: Basil, fresh leaves; mint, fresh leaves; basil, dried leaves; and mint, dried leaves. The representative commodities are based on similarities to the related commodities within a group or subgroup regarding their edible portions, cultural methods, geographical locations, and pest problems, as well as considerations based on their high production (both acres and yield) and consumption compared to other crops in proposed Crop Group 25. Based on EPA's analysis for the proposed Crop Group 25, these representative commodities will account for more than 99% of the harvested United States acres for the members of the new crop group (Ref. 7).

Basil has been a representative commodity for the Crop Group 19 and for the herb subgroup 19A since 1995 and has several established tolerances. Mint, which will cover all members of the mint (*Mentha* spp.) family including peppermint and spearmint, is replacing chive as a representative commodity since it is more widely grown (240,000 hectares worldwide versus 24,000 hectares worldwide) (Ref 7.), and because chive, fresh leaves, are in a different crop group. Additionally, both basil and mint are important parts of many cuisines, especially European, Mediterranean, Indian and Asian cooking. EPA expects that all proposed members of the proposed crop group will have similar residue levels based on similarities of the raw agricultural commodities (RACs), and comparisons of established tolerances on these commodities support that residue levels will cover the wide number of commodities.

3. C*rop subgroups.* EPA proposes two crop subgroups for the new ''Crop Group 25: Herb Group'': Subgroup 25A for fresh herbs and subgroup 25B for dried herbs. Comparisons of established tolerances proposed for the new herb, fresh leaves subgroup 25A and the new herb, dried leaves subgroup 25B have shown tolerances for dried herbs are often significantly higher (4X to 7.3X) than fresh herbs, indicating a need for different tolerances or subgroups for fresh and dried herbs (Ref. 7). In addition, fresh herbs are grown in a different way than dried herbs. Fresh herbs are grown more like fresh-cut flowers, and a high-quality product free of pests is required for their sale. Dried herbs, on the other hand, are grown like alfalfa and machine harvested with or without insect holes, which is not an issue for their sale. Dried herbs also have less storage problems than fresh herbs. Additionally, many herbs grown for dietary supplements are prepared in their dried forms, and all herb oils are also prepared from dried herbs. It is worth noting that 40 CFR180.40(f)(2) allows crop group tolerances to be established for processed commodities or fractions of commodities, such as ''Herb, subgroup 25B, oil''.

Most commodities in proposed Crop Group 25 are included in both the fresh leaves and dried leaves forms and therefore would be in both proposed subgroups. However, there are 38 commodities that are included in proposed Crop Group 25 as only the fresh leaves or dried leaves. These are discussed briefly below; see Refs. 6—9 for more details.

For seven commodities, only the dried leaves are included in proposed Crop Group 25 because the fresh leaves are already included in a different crop group. Pesticide residues on the fresh forms of these commodities are expected to be similar to the commodities in another crop group than they are to herbs. These seven commodities and the crop group the fresh leaves are in are as follows:

• Chervil, *Anthriscus cerefolium* (L.) Hoffm; Cilantro, *Coriandrum sativum* L. (4–16); Dillweed, *Anethum graveolens* L.; and Parsley, *Petroselinum crispum* (Mill.) Fuss; *Petroselinum crispum* var. *neapolitanum* Danert in Crop Group 4–16 Leafy Vegetable Group;

• Chive, *Allium schoenoprasum* L. and Chive, Chinese, *Allium tuberosum* Rottler ex Spreng in Crop Group 3–07 Bulb Vegetable Group; and

• Fennel, Florence, fresh leaves and stalk in Crop Group 22 Stalk, Stem and Leaf Petiole Vegetable Group.

The other 30 commodities are included in proposed Crop Group 25 only in the dried leaves form or the fresh leaves form because only one form is currently utilized in commerce. For example, some are dietary supplements used only in the dried form, while other commodities are used in foods as only the fresh or dried form.

• Eleven commodities are included in proposed Crop Group 25 only in their fresh leaves form: Blue mallow, fresh leaves, *Malva sylvestris* L.; Celandine, greater, fresh leaves, *Chelidonium majus* L.; Celandine, lesser, fresh leaves, *Ficaria verna* Huds.; Curryplant, fresh leaves, *Helichrysum italicum* (Roth) G. Don; Dokudami, fresh leaves, *Houttuynia cordata* Thunb.; Field pennycress, fresh leaves, *Thlaspi arvense* L.; Gambir, fresh leaves, *Uncaria gambir* (W. Hunter) Roxb.; Honewort, fresh leaves, *Cryptotaenia canadensis* (L.) DC.; Swamp leaf, fresh leaves, *Limnophila chinensis* (Osbeck) Merr.; Veronica, fresh leaves, *Veronica officinalis* L.; and Waterpepper, fresh leaves, *Persicaria hydropiper* (L.) Delarbre.

• Nineteen commodities are included in proposed Group 25 only in their dried leaves form: Butterbur, dried leaves, *Petasites hybridus* (L.) G. Gaertn. Et al., *P. frigidus (L.)* Fr.; Cat's claw, dried leaves, *Uncaria tomentosa* (Willd.) DC., *Uncaria guianensis* (Aubl.) J.F. Gmel.; Chinese chastetree, dried leaves, *Vitex negundo* L.; Chinese foxglove, dried leaves, *Rehmannia glutinosa* (Gaertn.) Steud.; Creat, dried leaves, *Andrographis paniculata* (Burm. f.) Wall. Ex Nees; Echinacea, dried leaves, *Echinacea angustifolia* DC; Eucommia, dried leaves, *Eucommia ulmoides* Oliv.; Galbanum, dried leaves, *Ferula gummosa* Boiss.; Gotu kola, dried leaves, *Centella asiatica* (L.) Urb.; Gymnema, dried leaves, *Gymnema sylvestre* (Retz.) Schult.; Honeybush, dried leaves, *Cyclopia genistoides* (L.) R. Br.; Mamaki, dried leaves, *Pipturus arborescens* (Link) C. B. Rob.; Mulberry, white, dried leaves, *Morus alba* L.; Rooibos, dried leaves, *Aspalathus linearis* (Burm. f.) R. Dahlgren; Squaw vine, dried leaves, *Mitchella repens* L.; St. John's Wort, dried leaves, *Hypericum perforatum* L.; Stevia, dried leaves, *Stevia rebaudiana* (Bertoni) Bertoni; Vasaka, dried leaves, *Justicia adhatoda* L.; and Wood betony, dried leaves, *Stachys officinalis* (L.) Trevis.

EPA is considering revising the herb group and herb subgroups in the final rule to include both forms of the 30 commodities listed in the two previous paragraphs. Making this change would ensure coverage of residues in those other forms in case there are changes in how these commodities are used in the future, *e.g.,* if the fresh leaves form is used in the future even though only the dried leaves form is used now. Recognizing the potential for confusion with pesticide applications to fresh and dried herbs, EPA intends, as a separate effort, to take into consideration approaches to labeling to ensure that pesticide labels clearly describe the list of herbs and their forms on which the pesticide can be used. EPA requests comments on including the 30 commodities in both forms in herb group 25 and its subgroups in the final rule.

i. *Herb, fresh leaves subgroup 25A.* (Representative commodities—Basil, fresh leaves and mint, fresh leaves). EPA is proposing 151 commodities in new subgroup 25A: Agrimony, fresh leaves, *Agrimonia eupatoria* L.; Angelica, fresh leaves; Angelica, fragrant, fresh leaves; Applemint, fresh leaves; Avarum, fresh leaves; Balm, fresh leaves; Balloon pea, fresh leaves; Barrenwort, fresh leaves; Basil, fresh leaves; Basil, American, fresh leaves; Basil, Greek, fresh leaves; Basil, holy, fresh leaves; Basil, lemon, fresh leaves; Basil, Russian, fresh leaves; Bay, fresh leaves; Bisongrass, fresh leaves; Blue mallow, fresh leaves; Boneset, fresh leaves; Borage, fresh leaves; Borage, Indian, fresh leaves; Burnet, fresh leaves; Burnet, garden, fresh leaves; Burnet, salad, fresh leaves; Calamint, fresh leaves; Calamint, large-flower, fresh leaves; Calamint, lesser, fresh leaves; Calendula, fresh leaves; Camomile (Chamomile), fresh leaves; Caltrop, fresh leaves; Camomile (Chamomile), German, fresh leaves; Camomile (Chamomile), Roman, fresh leaves; Caraway, fresh leaves; Catnip, fresh leaves; Catnip, Japanese, fresh leaves; Celandine, greater, fresh leaves; Celandine, lesser, fresh leaves; Centaury, fresh leaves; Chaste tree, fresh leaves; Cicely, sweet, fresh leaves; Clary, fresh leaves; Coriander, Bolivian, fresh leaves; Coriander, Vietnamese, fresh leaves; Costmary, fresh leaves; Culantro, fresh leaves; Curry leaf, fresh leaves; Curryplant, fresh leaves; Cut leaf, fresh leaves; Dokudami, fresh leaves; Epazote, fresh leaves; Evening primrose, fresh leaves; Fennel, common, fresh leaves; Fennel, Spanish, fresh leaves; Fenugreek, fresh leaves; Feverfew, fresh leaves; Field pennycress, fresh leaves; Flowers, edible, fresh, multiple species; Fumitory, fresh leaves; Gambir, fresh leaves; Geranium, fresh leaves; Geranium, lemon, fresh leaves; Geranium, rose, fresh leaves; Germander, golden, fresh leaves; Gumweed, fresh leaves; Gypsywort, fresh leaves; Heal-all, fresh leaves; Honewort, fresh leaves; Horehound, fresh leaves; Horsemint, fresh leaves; Hyssop, fresh leaves; Hyssop, anise, fresh leaves; Jasmine, fresh leaves; Labrador tea, fresh leaves; Lavender, fresh leaves; Lemongrass, fresh leaves; Lemon verbena, fresh leaves; Lovage, fresh leaves; Love-in-a-mist, fresh leaves; Marigold, fresh leaves; Marigold, African, fresh leaves; Marigold, Aztec, fresh leaves; Marigold, French, fresh leaves; Marigold, Irish lace, fresh leaves; Marigold, licorice, fresh leaves; Marigold, Mexican mint, fresh leaves; Marigold, signet, fresh leaves; Marjoram, fresh leaves; Marjoram, pot, fresh leaves; Marjoram, sweet, fresh leaves; Marshmallow, fresh leaves; Meadowsweet, fresh leaves; Mint, fresh leaves; Mint, corn, fresh leaves; Mint, Korean, fresh leaves; Motherwort, fresh leaves; Monarda, fresh leaves; Mountainmint, fresh leaves; Mountainmint, clustered, fresh leaves; Mountainmint, hoary, fresh leaves; Mountainmint, Virginia, fresh leaves; Mountainmint, whorled, fresh leaves; Mugwort, fresh leaves; Mullein, fresh leaves; Nasturtium, fresh leaves; Nasturtium, bush, fresh leaves; Nasturtium, garden, fresh leaves; Nettle, fresh leaves; Oregano, fresh leaves; Oregano, Mexican, fresh leaves; Oregano, Puerto Rico, fresh leaves; Oswego tea, fresh leaves; Pandan leaf, fresh leaves; Pansy, fresh leaves; Paracress, fresh leaves; Pennyroyal, fresh leaves; Peppermint, fresh leaves; Perilla, fresh leaves; Rose, fresh leaves; Rosemary, fresh leaves; Sage, fresh leaves; Sage, Greek, fresh leaves; Sage, Spanish, fresh leaves; Savory, summer, fresh leaves; Savory, winter, fresh leaves; Sorrel, fresh leaves; Sorrel, French, fresh leaves; Sorrel, garden, fresh leaves; Southernwood, fresh leaves; Spearmint, fresh leaves; Spearmint, Scotch, fresh leaves; Spotted beebalm, fresh leaves; Swamp leaf, fresh leaves; Tansy, fresh leaves; Tarragon, fresh leaves; Thyme, fresh leaves; Thyme, creeping, fresh leaves; Thyme, lemon, fresh leaves; Thyme, mastic, fresh leaves; Toon, Chinese, fresh leaves; Veronica, fresh leaves; Violet, fresh leaves; Watermint, fresh leaves; Waterpepper, fresh leaves; Wild bergamot, fresh leaves; Wintergreen, fresh leaves; Woodruff, fresh leaves; Wormwood, fresh leaves; Wormwood, Roman, fresh leaves; Yarrow, fresh leaves; Yellow gentian, fresh leaves; Yerba santa, fresh leaves; Yomogi, fresh leaves. Also included are cultivars, varieties, and hybrids of these commodities.

ii. *Herb, dried leaves subgroup 25B.* (Representative commodities—Basil, dried leaves and Mint, dried leaves). EPA is proposing 166 commodities in new subgroup 25B: Agrimony, dried leaves; Angelica, dried leaves; Angelica, fragrant, dried leaves; Applemint, dried leaves; Avarum, dried leaves; Balm, dried leaves; Balloon pea, dried leaves; Barrenwort, dried leaves; Basil, dried leaves; Basil, American, dried leaves; Basil, Greek, dried leaves; Basil, holy, dried leaves; Basil, lemon, dried leaves; Basil, Russian, dried leaves; Bay, dried leaves; Bisongrass, dried leaves; Boneset, dried leaves; Borage, dried leaves; Borage, Indian, dried leaves; Burnet, dried leaves; Burnet, garden, dried leaves; Burnet, salad, dried leaves; Butterbur, dried leaves; Calamint, dried leaves; Calamint, large-flower, dried leaves; Calamint, lesser, dried leaves; Calendula, dried leaves; Caltrop, dried leaves; Camomile (Chamomile), dried leaves; Camomile (Chamomile), German, dried leaves; Camomile (Chamomile), Roman, dried leaves; Caraway, dried leaves; Cat's claw, dried leaves; Catnip, dried leaves; Catnip, Japanese, dried leaves; Centaury, dried leaves; Chaste tree, dried leaves;

Chervil, dried leaves; Chinese chastetree, dried leaves; Chinese foxglove, dried leaves; Chive, dried leaves; Chive, Chinese, dried leaves; Cicely, sweet, dried leaves; Cilantro, dried leaves; Clary, dried leaves; Coriander, Bolivian, dried leaves; Coriander, Vietnamese, dried leaves; Costmary, dried leaves; Creat, dried leaves; Culantro, dried leaves; Curry leaf, dried leaves; Cut leaf, dried leaves; Dillweed, dried leaves; Echinacea, dried leaves; Epazote, dried leaves; Eucommia, dried leaves; Evening primrose, dried leaves; Fennel, common, dried leaves; Fennel, Florence, dried leaves; Fennel, Spanish, dried leaves; Fenugreek, dried leaves; Feverfew, dried leaves; Flowers, edible, dried, multiple species; Fumitory, dried leaves; Galbanum, dried leaves; Geranium, dried leaves; Geranium, lemon, dried leaves; Geranium, rose, dried leaves; Germander, golden, dried leaves; Gotu kola, dried leaves; Gumweed, dried leaves; Gymnema, dried leaves; Gypsywort, dried leaves; Heal-all, dried leaves; Honeybush, dried leaves; Horehound, dried leaves; Horsemint, dried leaves; Hyssop, dried leaves; Hyssop, anise, dried leaves; Jasmine, dried leaves; Labrador tea, dried leaves; Lavender, dried leaves; Lemongrass, dried leaves; Lemon verbena, dried leaves; Lovage, dried leaves; Love-in-a-mist, dried leaves; Mamaki, dried leaves; Marigold, dried leaves; Marigold, African, dried leaves; Marigold, Aztec, dried leaves; Marigold, French, dried leaves; Marigold, Irish lace, dried leaves; Marigold, licorice, dried leaves; Marigold, Mexican mint, dried leaves; Marigold, signet, dried leaves; Marjoram, dried leaves; Marjoram, pot, dried leaves; Marjoram, sweet, dried leaves; Marshmallow, dried leaves; Meadowsweet, dried leaves; Mint, dried leaves; Mint, corn, dried leaves; Mint, Korean, dried leaves; Monarda, dried leaves; Motherwort, dried leaves; Mountainmint, dried leaves; Mountainmint, clustered, dried leaves; Mountainmint, hoary, dried leaves; Mountainmint, Virginia, dried leaves; Mountainmint, whorled, dried leaves; Mugwort, dried leaves; Mulberry, white, dried leaves; Mullein, dried leaves; Nasturtium, dried leaves; Nasturtium, bush, dried leaves; Nasturtium, garden, dried leaves; Nettle, dried leaves; Oregano, dried leaves; Oregano, Mexican, dried leaves; Oregano, Puerto Rico, dried leaves; Oswego tea, dried leaves; Pandan leaf, dried leaves; Pansy, dried leaves; Paracress, dried leaves; Parsley, dried leaves; Pennyroyal, dried leaves; Peppermint, dried leave; Perilla, dried leaves; Rooibos, dried leaves; Rose, dried leaves; Rosemary, dried leaves; Sage, dried leaves; Sage, Greek, dried leaves; Sage, Spanish, dried leaves; Savory, summer, dried leaves; Savory, winter, dried leaves; Sorrel, dried leaves; Sorrel, French, dried leaves; Sorrel, garden, dried leaves; Southernwood, dried leaves; Spearmint, dried leaves; Spearmint, Scotch, dried leaves; Spotted beebalm, dried leaves; Squaw vine, dried leaves; St. John's Wort, dried leaves; Stevia, dried leaves; Tansy, dried leaves; Tarragon, dried leaves; Thyme, dried leaves; Thyme, creeping, dried leaves; Thyme, lemon, dried leaves; Thyme, mastic, dried leaves; Toon, Chinese, dried leaves; Vasaka, dried leaves; Violet, dried leaves; Watermint, dried leaves; Wild bergamot, dried leaves; Wintergreen, dried leaves; Wood betony, dried leaves; Woodruff, dried leaves; Wormwood, dried leaves; Wormwood, Roman, dried leaves; Yarrow, dried leaves; Yellow gentian, dried leaves; Yerba santa, dried leaves; Yomogi, dried leaves. Also included are cultivars, varieties, and hybrids of these commodities.

4. *Commodity definitions.* In conjunction with the new Crop Group 25, EPA proposes three new commodity definitions for basil, edible flowers, and mint. In addition, EPA proposes to amend the commodity definition for marjoram. These commodity definitions are being proposed as specified in the proposed regulatory text to distinguish and define the various varieties of basil, edible flowers, marjoram, and mint. These proposed commodity definitions, which will be defined in 40 CFR180.1(g), cover both fresh and dried leaves to be consistent with the subgroups in proposed Crop Group 25.

The proposed basil commodity definition is needed since it is one of the proposed representative commodities and includes several types of basil species.

The proposed edible flowers definition is needed because there are many flowers that are used as herbs in restaurant cuisine and are available at limited times in grocery stores for the consumer. If listed separately in Crop Group 25, there would be over 100 additional commodities just for their edible flowers.

The proposed commodity definition for mint is needed since it is one of the representative commodities and includes several mint species (*Mentha* spp.), including peppermint and spearmint.

EPA is also proposing to revise the current commodity definition for marjoram. This revision is needed to reflect the proposed Crop Group 25 and correct plant species names.

C. Crop Group 26: Spice Group

EPA is proposing to establish a new crop group, entitled ''Crop Group 26: Spice Group.''

1. *Commodities.* EPA proposes to include the following 166 commodities in Crop Group 26: Ajowan, seed, *Trachyspermum ammi* (L.) Sprague ex Turrill; Allspice, *Pimenta dioica* (L.) Merr; Ambrette seed, *Abelmoschus esculentus* (L.) Moench; Amia, *Phyllanthus amarus* Schumach; Angelica, seed, *Angelica archangelica* L.; Angostura bark, *Angostura trifoliata* (Willd.) T.S. Elias; Anise seed, *Pimpinella anisum* L; Anise pepper, *Zanthoxylum piperitum* (L.) DC.; Anise, star, *Illicium verum* Hook. f.; Annatto seed, *Bixa orellana* L.; Asafoetida, *Ferula assa-foetida* L.; Ashwagandha, fruit, *Withania somnifera* (L.) Dunal; Balsam, Peruvian, *Myroxylon balsamum* (L.) Harms var. *pereirae;* Batavia-cassia, fruit, *Cinnamomum burmanni* (Nees & T. Nees) Blume; Batavia-cassia, bark, *Cinnamomum burmanni* (Nees & T. Nees) Blume; Belleric myrobalan, *Terminalia bellirica* (Gaertn.) Roxb.; Betel vine, *Piper betel* L.; Black bread weed, *Nigella arvensis* L.; Blue mallee, *Eucalyptus polybractea* R.T. Baker; Boldo, leaves, *Peumus boldus* Molina; Buchi, *Agathosma betulina* (P.J. Bergius) Pillans; Calamus-root, *Acorus calamus* L.; Candlebush, *Senna alata* (L.) Roxb.; Canella bark, *Canella winterana* (L.) Gaertn; Caper buds, *Capparis spinosa* L.; Caraway, fruit, *Carum carvi* L.; Caraway, black, *Nigella sativa* L.; Cardamom, black, *Amomum* spp.; Cardamom, Ethiopian, *Aframomum corrorima* (A. Braun) P.C. M. Jansen; Cardamom, green, *Elettaria cardamomum* (L.) Maton; Cardamom, Nepal, *Amomum subulatum* Roxb., *Amomum aromaticum* Roxb.; Cardamom-amomum, *Amomum compactum* Sol. ex Maton; Cascada buckthorn, bark, *Frangula purshiana* (DC.) A. Gray; Cassia bark, *Cinnamomum* spp.; Cassia fruit, *Cinnamomum* spp.; Cassia, Chinese, fruit, *Cinnamomum aromaticum* Nees.; Cassia, Chinese, bark, *Cinnamomum aromaticum* Nees; Cat's claw, roots, *Uncaria tomentosa* (Willd.) DC., *Uncaria guianensis* (Aubl.) J.F. Gmel.; Catechu, bark, *Senegalia catechu* (L.f.) P.J.H. Hurter & Mabb.; Celery seed, *Apium graveolens* var. *dulce* (Mill.) Pers.; Chervil, seed, *Anthriscus cerefolium* (L.) Hoffm.; Chaste treeberry, berry, *Vitex agnus-castus* L.; Chinese chastetree, roots, *Vitex negundo* L.; Chinese hawthorn, *Crataegus pinnatifida* Bunge; Chinese nutmeg tree,

Torreya grandis Fortune; Chinese-pepper, *Zanthoxylum simulans* Hance; Chinese prickly-ash, *Zanthoxylum bungeanum* Maxim; Cinnamon, bark, *Cinnamomum verum* J. Presl; Cinnamon, fruit, *Cinnamomum verum* J. Presl; Cinnamon, Saigon, fruit, *Cinnamomum loureiroi* Nees; Cinnamon, Saigon, bark, *Cinnamomum loureiroi* Nees; Clove buds, *Syzygium aromaticum* (L.) Merr. & L.M. Perry; Copaiba, *Copaifera officinalis* (Jacq.) L.; Coptis, *Coptis, Coptis chinensis Franch., Coptis spp.* Franch., *Coptis* spp.; Coriander, fruit, *Coriandrum sativum* L.; Coriander, seed, *Coriandrum sativum* L.; Cubeb, seed, *Piper cubeba* L.f.; Culantro, seed, *Eryngium foetidum* L.; Cumin, *Cuminum cyminum* L.; Cumin, black, *Bunium persicum* (Boiss.) B. Fedtsch.; Daharian angelica, leaves, *Angelica dahurica* (Hoffm.) Benth. & Hook. f. ex Franch. & Sav.; Daharian angelica, seed, *Angelica dahurica* (Hoffm.) Benth. & Hook. f. ex Franch. & Sav.; Damiana leaf, *Turnera diffusa* Willd.; Dill, seed, *Anethum graveolens* L.; Dorrigo pepper, berry, *Tasmannia stipitata* (Vick.) A.C. Smith; Dorrigo pepper, leaf, *Tasmannia stipitata* (Vick.) A.C. Smith; Epimedium, *Epimedium* spp.; Eucalyptus, *Eucalyptus* spp.; Eucommia, bark, *Eucommia ulmoides* Oliv.; Felty germander, *Teucrium polium* L.; Fennel, common, fruit, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare;* Fennel, common, seed, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare;* Fennel, Florence, fruit, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *azoricum* (Mill.) Thell.; Fennel, Florence, seed, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *azoricum* (Mill.) Thell.; Fennel flower, seed, *Nigella hispanica* L.; Fenugreek, seed, *Trigonella foenum-graecum* L.; Fingerroot, *Boesenbergia rotunda* (L.) Mansf.; Frankincense, *Boswellia sacra* Flueck.; Frankincense, Indian, *Boswellia serrata* Roxb. ex Colebr.; Galbanum, *Ferula gummosa* Boiss.; Gambooge, *Garcinia gummi-gutta* (L.) N. Robson; Grains of Paradise, *Aframomum melegueta* K. Schum.; Grains of Selim, *Xylopia aethiopica* (Dunal) A. Rich.; Guarana, *Paullinia cupana* Kunth; Guaiac, *Guaiacum officinale* L.; Guggul, *Commiphora wightii* (Arn.) Bhandari; Gum arabic, *Senegalia senegal* (L.) Britton; Gum ghatti, *Anogeissus latifolia* (Roxb. ex DC.) Wall. ex Guill. & Perr.; Gum karaya, *Stercula urens* Roxb; Gum tragacanth, *Astragalus gummifer* Labill.; Gymnema, dried leaves, *Gymnema sylvestre* (Retz.) Schult.; Haw, black, *Viburnum prunifolium* L.; Honewort, seed, *Cryptotaenia canadensis* (L.) DC.; Imperatoria, *Peucedanum officinale* L.; Iva, *Achillea erba-rotta* All. subsp. *moschata* (Wulfen) I. Richardson; Jalap, *Ipomoea purga* (Wender.) Hayne; Juniper berry, *Juniperus communis* L.; Kaffir lime, leaf, *Citrus hystrix* DC.; Kewra, *Pandanus fascicularis* Lam.; Kokam, *Garcinia indica* (Thouars) Choisy; Linden, dried leaves, *Tilia americana* L.; Lovage, seed, *Levisticum officinale* W.D.J. Koch; Mace, *Myristica fragrans* Houtt.; Magnolia-bark, *Magnolia officinalis* Rehder & E.H. Wilson; Mahaleb, *Prunus mahaleb* L.; Malabar cardamom, *Amomum villosum* Lour.; Malabathrum, *Cinnamomum tamala* (Buch.-Ham.) Nees & Eberm.; Malabar-tamarind, *Garcinia* spp.; Mastic, *Pistacia lentiscus* L.; Micromeria, white, *Micromeria fruticosa* (L.) Druce; Milk thistle, *Silybum marianum* (L.) Gaertn.; Mioga, *Zingiber mioga* (Thunb.) Roscoe; Miracle fruit, *Synsepalum dulcificum* (Schumach. & Thonn.) Daniell; Mustard seed, *Brassica* spp. and *Sinapis* spp.; Mustard, black (*Brassica nigra* (L.) W.D.J. Koch; Mustard, brown (*Brassica juncea* (L.) Czern. var. *juncea;* Mustard, white, *Sinapis alba* L. ssp. a*lba;* Myrrh, *Commiphora myrrha* (Nees) Engl., *Commiphora africana* (A. Rich.) Engl.; Myrrh, bisabol, *Commiphora kataf* (Forssk.) Engl; Myrtle, dried leaves, *Myrtus communis* L.; Myrtle, anise, *Syzygium anisatum* (Vickery) Craven & Biffen; Myrtle, lemon, *Backhousia citriodora* F. Muell.; Nasturtium, pods, *Tropaeolum* spp.; Nasturtium, bush, pods, *Tropaeolum minus* L.; Nasturtium, garden, pods, *Tropaeolum majus* L.; Nutmeg, *Myristica fragrans* Houtt.; Pepper, black, *Piper nigrum* L.; Pepper, white, *Piper nigrum* L.; Pepper, Cubeb, *Piper cubeba* L.f.; Pepper, Indian long (*Piper longum* L.; Pepper, leaf, *Piper auritum* Kunth, *Piper lolot* C.DC, *Piper sanctum* (Miq.) Schltdl., *Piper umbellatum* L.; Pepper, Long, *Piper longum* L.; Pepper, Javanese Long, *Piper retrofractum* Vahl.; Pepper, Sichuan, *Zanthoxylum* spp.; Pepperbush, berry, *Tasmannia* spp.; Pepperbush, leaf, *Tasmannia* spp.; Peppertree, *Schinus* spp.; Peppertree, Brazilian, *Schinus terebinthifolius* Raddi; Peppertree, Peruvian, *Schinus molle* L.; Perilla leaf, *Perilla frutescens* (L.) Britton; Perilla seed, *Perilla frutescens* (L.) Britton; Pine, maritime, *Pinus pinaster* Aiton; Pipsissewa, leaves, *Chimaphila umbellata* (L.) W.P.C. Barton; Poppy seed, *Papaver somniferum* L. subsp. *somniferum;* Pygeum, *Prunus africana* (Hook.f.) Kalkman; Quassia, bark, *Quassia amara* L.; Quebracho *bark, Aspidosperma quebracho-blanco* Schltdl.; Quinine, *Cinchona pubescens* Vahl; Qing hua jiao, *Zanthoxylum schinifolium* Siebold & Zucc; Quillaja, *Quillaja saponaria* Molina; Rue, *Ruta graveolens* L.; Saffron crocus, *Crocus sativus* L.; Sassafras, leaves, *Sassafras albidum* (Nutt.) Nees; Saunders, red, *Pterocarpus santalinus* L.f.; Simaruba, bark, *Simarouba amara* Aubl.; Slippery elm, *Ulmus rubra* Muhl.; Sumac, fragrant, *Rhus aromatica* Aiton; Sumac, smooth leaf, *Rhus glabra* L.; Tasmanian pepper berry, *Tasmannia lanceolata* (Poir.) A.C. Sm.; Tasmanian pepper leaf, *Tasmannia lanceolata* (Poir.) A.C. Sm.; Tsao-Ko, *Amomum tsao-ko* Crevost & Lemarié; Vanilla, *Vanilla planifolia* Jacks.; Wattleseed, *Acacia* spp.; White willow, *Salix alba* L.; Yellow gentian, roots, *Gentiana lutea* L.; and Willow, *Salix* spp. Also included are cultivars, varieties, and hybrids of these commodities.

Spices are classified based on the specific plant part that is edible. Over 2,000 commodities were researched as being members of this crop group. The commodities proposed here were selected for this new crop group based on similarities of growth habits and edible plant parts that are exposed similarly to pesticides, geographical distribution, lack of animal feed items, comparison of established tolerances, and for international harmonization purposes. All the spices currently included in Crop Group 19 are proposed for inclusion in this new Crop Group 26.

Adding these spice commodities into a separate group will benefit these growers by enabling the use of pesticides not previously available for crop protection. Many minor spice orphan crops have become more popular in some countries and areas today than they were at the time Crop Group 19 was established. Increased globalization of spices in cooking in the United States has resulted in additional spices to be enjoyed worldwide. Some of these ''minor'' crops have great potential to be grown on a larger scale in some areas in the future due to their unique nutritional and medicinal values. Being included in a crop group means that individual tolerances do not need to be established for each commodity nor does residue data need to be generated for each of the individual commodities. Because the demand for spices keeps increasing in the United States, these crops may provide local market growers new revenue opportunities for spices with high returns per acre. Also, allowing EPA's risk assessments to focus on the representative crop is reliable and efficient.

2. *Representative commodities.* EPA proposes the option of one of the following two commodities as the

representative commodity for the proposed Crop Group 26: Celery seed or Dill seed.

Most spices are not grown in the United States. Black pepper, which is one of the representative commodities required for Crop Group 19 and for subgroup 19B, is one such commodity that is not grown in the United States. Black pepper has therefore become an obstacle to the development of tolerances for herbs and spices in Crop Group 19 and for spices in subgroup 19B. For this reason, EPA proposes to no longer list black pepper as a representative commodity.

Crop Group 19 and subgroup 19B also provide a choice between celery seed or dill seed as one of the representative commodities, and EPA proposes to maintain this choice for Crop Group 26. Unlike black pepper, celery seed and dill seed are grown in the United States and would be significant representative commodities for the proposed Crop Group 26. Celery seed and dill seed have similar residue levels based on similarities of the raw agricultural commodities, cultural methods, pest problems, and exposure to pesticide sprays. The proposed representative commodities also cover over 99% of the total spice production areas in the United States, and they also tend to be an equal or more conservative estimate of tolerances and potential residues (Ref. 8). Therefore, EPA is proposing that the representative commodities for proposed Crop Group 26 be a choice between celery seed or dill seed.

3. *No subgroups in new Crop Group 26.* EPA proposes not to establish subgroups in new Crop Group 26. As stated previously, most spices are not grown in the United States. Crop subgroups for spices would not be beneficial because of the low acreage of these crops and their inability to be readily grown in the United States, with the exception of dill seed and celery seed. Additionally, since EPA is proposing a choice between celery seed *or* dill seed, testing on only one of these representative commodities will support a tolerance for all commodities listed in Crop Group 26, negating the need for subgroups at this time.

D. Other Changes

1. Revisions to 180.40(j)

As noted in Unit II.D., EPA is proposing to amend paragraph (j) to update the crop group revision process to include the current approach being taken in this rulemaking. For this rulemaking, EPA is proposing to amend the single Crop group 19 by splitting it into two new separate crop groups using different names and different numbers—*i.e.,* commodities in ''Herbs and Spices, group 19'' would be separated into two new crop groups: ''Herbs, group 25'' and ''Spices, group 26''. EPA's proposed amendment to paragraph (j) recognizes this process for revising crop groups.

The rest of the process mirrors the current process in 40 CFR180.41(j), where EPA would: (1) No longer establish tolerances under the pre-existing crop group; (2) amend tolerances for the pre-existing crop group to conform them to the revised crop group at appropriate times; and (3) remove the pre-existing crop group from the CFR once all the tolerances for the pre-existing crop group have been updated.

EPA plans to eventually convert tolerances for any pre-existing crop groups to tolerances with the coverage of the new crop group. This conversion will be implemented through the registration review process and in the course of establishing new tolerances for a pesticide. To this end, EPA requests that petitioners for tolerances address this issue in their petitions once this crop group rule is finalized.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. USEPA. *Pesticide Tolerance Crop Grouping Program; Final Rule.* **Federal Register** (72 FR 69150, December 7, 2007) (FRL–8343–1).
2. USEPA. *Pesticide Tolerance Crop Grouping Program II; Revisions to General Tolerance Regulations; Final Rule.* **Federal Register** (75 FR 76284, December 8, 2010) (FRL–8853–8).
3. USEPA. *Pesticide Tolerance Crop Grouping Program III; Revisions to General Tolerance Regulations; Final Rule.* **Federal Register** (77 FR 50617, August 22, 2012) (FRL–9354–3).
4. USEPA. *Pesticide Tolerance Crop Grouping Program Amendment IV; Final Rule.* **Federal Register** (81 FR 26471, May 3, 2016) (FRL–9944–87).
5. USEPA. *Pesticide Tolerance Crop Grouping Program; Proposed Expansion; Proposed Rule.* **Federal Register** (72 FR 28920, May 23, 2007) (FRL–8126–1).
6. USDA IR–4. Barney, William. *USDA–IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(26) and Commodity Definitions [40 CFR 180.1(g)] for Crop Group 19, Herb and Spice Group.* May 29, 2008.
7. Schneider, Bernard A. *EPA Memorandum: Crop Grouping—Part XVB: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(26) and Commodity Definitions [40 CFR 180.1(g)] Related to Crop Group 19 Herb and Spice Group. Emphasis on New Herb Crop Group 25.* June 8, 2015. Updated March 21, 2017.
8. Schneider, Bernard A. *EPA Memorandum: Crop Grouping—Part XVC: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(26) and Commodity Definitions [40 CFR 180.1(g)] Related to Crop Group 19 Herb and Spice Group. Emphasis on New Spice Crop Group 26.* August 21, 2015. Updated March 20, 2017.
9. Schneider, Bernard A. *EPA Memorandum: Crop Grouping—Part XVD: Appendices for the Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(26) and Commodity Definitions [40 CFR 180.1(g)] Related to Herb Crop Group 25 and Spice Crop Group 26.* June 15, 2015.
10. USEPA. *Economic Analysis of the Proposed Expansion of Crop Grouping Program.* February 12, 2007. EPA Docket ID No. EPA–HQ–OPP–2006–0766–0012.
11. USEPA. *Burden Reduction from the Proposed Expansion of Crop Grouping Program.* June 26, 2019.
12. USEPA. *Chemistry Science Advisory Council (ChemSAC) Meeting Minutes: Summary of ChemSAC Decisions/ Discussion on Herb Crop Group 25 and Spice Crop Group 26.* August 30, 2017.
13. USEPA. *Chemistry Science Advisory Council (ChemSAC) Meeting Minutes: Use of Monitoring Data to Establish Import Tolerances for Pesticide Residues in Spices.* May 10, 2017.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.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 under Executive Orders 12866 (58 FR 51735; October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

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

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in EPA's analysis of the potential

costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection requirements that would require additional review or approval by OMB under the provisions of PRA, 44 U.S.C. 3501 *et seq*. However, this action is expected to reduce mandatory paperwork due to a reduction in required studies. This action will also have the effect of reducing the number of residue chemistry studies because fewer representative crops would need to be tested under a crop grouping scheme than would otherwise be required.

D. 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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed action provides regulatory relief and regulatory flexibility. The new crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops. Rather than having any adverse impact on small businesses, this proposal would relieve regulatory burden for all directly regulated small entities.

E. 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 imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255), August 4, 1999). 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. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications as specified in Executive Order 13175 (62 FR 19985, April 23, 1997) because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) 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 concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866, nor does it affect energy supply, distribution or use.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards that would require consideration of voluntary concensus standards pursuant to NTTAA section 12(d), 15 U.S.C. 272 note.

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

This action does not involve special consideration of environmental justice related issues as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because this action does not address human health or environmental risks or otherwise have any disproportionate high and adverse human health or environmental effects on minority, low-income or indigenous populations.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Commodities, Environmental protection, Pesticides and pests.

Dated: August 15, 2019.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.1:

■ a. Add alphabetically the entries for ''Basil''; ''Flowers, edible, multiple species''; and ''Mint'' to the table in paragraph (g).

■ b. Revise the entry for ''Marjoram'' in the table in paragraph (g).

The additions and revision read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) * * *

A	B
*	*
Basil (*Ocimum* spp.)	Basil (*Ocimum basilicum* L.); Basil, American (*Ocimum americanum* L.); Basil, Greek (*Ocimum minimum* L.); Basil, holy (*Ocimum tenuiflorum* L.); Basil, lemon (*Ocimum x citriodorum* Vis.); Basil, Russian (*Ocimum gratissimum* L.).

A	B
*	* * * * * *
Flowers, edible, multiple species.	Nasturtium (*Tropaeolum* spp); Rose (Rosa spp.); Violet (*Viola odorata* L.); Acacia Blossoms (*Acacia senegal* (L.) Willd.); Alyssum, Sweet (*Lobularia maritima* (L.) Desv.); Anchusa, Garden (*Anchusa azurea* Mill.); Angelica (*Angelica archangelica* L.); Apricot, Japanese (*Prunus mume* Siebold & Zucc.); Arugula (*Eruca sativa* Mill.); Balm (*Melissa officinalis* L.); Banana (*Musa* spp.); Basil (*Ocimum* spp.); Begonia, Tuberous (*Begonia x tuberhybrida* Voss); Bilimbi (*Averrhoa bilimbi* L.); Borage (*Borago officinalis* L.); Broccoli (*Brassica oleracea* L. var. *italica* Plenck); Burnet (*Sanguisorba* spp.); Calendula (*Calendula officinalis* L.); Caper (*Capparis spinosa* L.); Carambola (*Averrhoa carambola* L.); Carnation (*Dianthus caryophyllus* L.); Chamomile (*Chamaemelum* spp. and *Matricaria* spp.); Chervil (*Anthriscus cerefolium* (L.) Hoffm.); Chicory (*Cichorium intybus* L.); Chive, Chinese (*Allium tuberosum* Rottler ex Spreng.); Chrysanthemum (*Chrysanthemum* spp.); Clary (*Salvia sclarea* L.); Clove (*Syzygium aromaticum* (L.) Merr. & L.M. Perry); Clover, Red (*Trifolium pratense* L.); Coriander/Cilantro (*Coriandrum sativum* L.); Cornflower (*Centaurea cyanus* L.); Costmary (*Tanacetum balsamita* L. subsp. *balsamita);* Daisy, English (*Bellis perennis* L.); Dame's Rocket (*Hesperis matronalis* L.); Dandelion (*Taraxacum officinale* F. H. Wigg. aggr.); Daylily (*Hemerocallis fulva* (L.) L.); Dill (*Anethum graveolens* L.); Elder (*Sambucus nigra* L.); Feijoa (*Acca sellowiana* (O. Berg) Burret); Fennel (common) (*Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare*); Frangipani (*Plumeria rubra* L.); Fuchsia (*Fuchsia* spp.); Gardenia (*Gardenia jasminoides* J. Ellis); Geranium (*Pelargonium* spp.); Geranium, Lemon (*Pelargonium crispum* (P.J. Bergius) L'Her.); Geranium, Rose (*Pelargonium graveolens* L'Hér.); Ginger, White (*Hedychium coronarium* J. Koenig); Gladiolus (*Gladiolus* spp.); Hibiscus (*Hibiscus* spp.); Hibiscus, Chinese (*Hibiscus rosa-sinensis* L.); Hollyhock (*Alcea rosea* L.); Honeysuckle, Japanese (*Lonicera japonica* Thunb.); Hyssop, anise (*Agastache foeniculum* (Pursh) Kuntze); Impatiens (*Impatiens walleriana* Hook. f.); Jasmine, Arabian (*Jasminum sambac* (L.) Aiton); Kewra (*Pandanus fascicularis* Lam.); Lavender (*Lavandula angustifolia* Mill.); Lemon (*Citrus limon* (L.) Burm. f.); Lilac (*Syringa vulgaris* L.); Lily, Mariposa (*C. gunnisonii*); Lily, Sego (*C. nuttallii*); Lotus (*Nelumbo nucifera* Gaertn.); Lovage (*Levisticum officinale* W.D.J. Koch); Mallow, High (*Malva sylvestris* L.); Marigold (*Tagetes* spp.); Marjoram (*Origanum* spp.); Meadowsweet (*Filipendula ulmaria* (L.) Maxim.); Mint (*Mentha* spp.); Mioga (*Zingiber mioga* (Thunb.) Roscoe); Monarda (*Monarda* spp.); Motherwort (*Leonurus cardiaca* L.); Mustard (*Brassica* spp. and *Sinapis* spp.); Nasturtium (*Tropaeolum* spp.); Okra (*Abelmoschus esculentus* (L.) Moench); Orange, Bitter (*Citrus aurantium* L.); Passion flower (*Passiflora* spp.); Pea Blossoms (*Pisum sativum* L. subsp. *sativum* var. *sativum);* Peach (*Prunus persica* (L.) Batsch var. *persica);* Peony, Common (*Paeonia officinalis* L.); Perilla (*Perilla frutescens* (L.) Britton); Petunia (*Petunia* x *hybrida* hort. ex E. Vilm.); Primrose (*Primula vulgaris* Huds.); Purslane, winter (*Claytonia perfoliata* Donn ex Willd.); Radish (*Raphanus sativus* L.); Redbud (*Cercis canadensis* L.); Rose (*Rosa* spp.); Rosemary (*Rosmarinus officinalis* L.); Rose-of-Sharon ((*Hibiscus syriacus* L.); Runner bean, Scarlet (*Phaseolus coccineus* L.); Safflower (*Carthamus tinctorius* L.); Sage (*Salvia officinalis* L.); Sage, Pineapple (*Salvia elegans*); Savory, Summer (*Satureja hortensis* L.); Saxifrage, Burnet (*Pimpinella saxifraga* L.); Snapdragon (*Antirrhinum majus* L.); Sorrel, Garden (*Rumex acetosa* L.); Sorrel, Wood (*Oxalis acetosella* L.); Squash (*Cucurbita* spp.); Stock, Gillyflower, Brompton stock (*Matthiola incana* (L.) W. T. Aiton); Sunflower (*Helianthus annuus* L.); Sweet William (*Dianthus barbatus* L.); Thyme (*Thymus vulgaris* L.); Tuberose (*Polianthes tuberosa* L.); Tulip (*Tulipa* spp.); Verbena, Lemon (*Aloysia citrodora* Palau); Violet (*Viola* spp.); Yucca (*Yucca* spp.), and other edible flowers.
*	* * * * * *
Marjoram (*Origanum* spp.) ...	Marjoram (*Origanum* spp.); Marjoram, pot (*Origanum onites* L.); Marjoram, sweet *(Origanum majorana* L.); Oregano (*Origanum vulgare* L.).
*	* * * * * *
Mint (*Mentha* spp.)	Mint (*Mentha* spp.); Applemint (*Mentha suaveolens* Ehrh.); Horsemint (*Mentha longifolia* (L.) Huds.); Mint, Corn (*Mentha arvensis* L.); Peppermint (*Mentha. x piperita* L.); Spearmint, (*Mentha spicata* L.); Spearmint, Scotch (*Mentha x gracilis* Sole); Watermint (*Mentha aquatica* L.); Pennyroyal (*Mentha pulegium* L.).
*	* * * * * *

* * * * *

■ 3. Amend § 180.40 by revising paragraph (j) to read as follows:

§ 180.40 Tolerances for crop groups.

* * * * *

(j)(1) When EPA amends a crop group in a manner that expands or contracts the commodities that are covered by the group, EPA will initially retain the pre-existing as well as the revised crop group in the CFR.

(2) Where the revised crop group has the same number as the pre-existing crop group, the revised crop group number will be followed by a hyphen and the final two digits of the year in which it was established (*e.g.,* if Crop Group 1 is amended in 2007, the revised group will be designated as Crop Group 1–07). If the pre-existing crop group had crop subgroups, these subgroups will be numbered in a similar fashion in the revised crop group. The name of the revised crop group will not be changed from the pre-existing crop group unless the revision so changes the composition of the crop group that the pre-existing name is no longer accurate.

(3) Where EPA amends a crop group by creating one or more different crop groups, the revised crop groups will have different numbers and names (*e.g.,* the amendment of Crop Group 19 through the creation of Crop Groups 25 and 26). The pre-existing crop group will be amended to identify the revised crop group(s).

(4) Once a revised crop group is established, EPA will no longer establish tolerances under the pre-existing crop group. At appropriate times, EPA will amend tolerances for crop groups that have been superseded by revised crop groups to conform the pre-existing crop group to the revised crop group. Once all of the tolerances for the pre-existing crop group have been updated, the pre-existing crop group will be removed from the CFR.

* * * * *

■ 4. In § 180.41:

■ a. Add a new paragraph (c)(28)(iv) after the table in paragraph (iii).

■ b. Add new paragraphs (c)(34) and (35).

The additions read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(28) * * *

* * * * *

(iv) After [*date of publication of final rule*], new herb crop group and subgroup tolerances will be established as Crop Group 25 or subgroups 25A and 25B, and new spice crop group tolerances will be established as Crop Group 26.

* * * * *

(34) *Crop Group 25.* Herb Group.

(i) *Representative commodities.* Basil, dried leaves; Basil, fresh leaves; Mint, dried leaves; and Mint, fresh leaves.

(ii) *Commodities.* The following Table 1 lists all commodities included in Crop Group 25 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 25: HERB GROUP

Commodities	Related crop subgroups
Agrimony, fresh leaves, *Agrimonia eupatoria* L	25A
Agrimony, dried leaves, *Agrimonia eupatoria* L	25B
Angelica, fresh leaves, *Angelica archangelica* L	25A
Angelica, dried leaves, *Angelica archangelica* L	25B
Angelica, fragrant, fresh leaves, *Angelica dahurica* (Hoffm.) Benth & Hook. F. ex Franch. & Sav	25A
Angelica, fragrant, dried leaves, *Angelica dahurica* (Hoffm.) Benth & Hook. F. ex Franch. & Sav	25B
Applemint, fresh leaves, *Mentha suaveolens* Ehrh	25A
Applemint, dried leaves, *Mentha suaveolens* Ehrh	25B
Avarum, fresh leaves, *Senna auriculata* (L.) Roxb	25A
Avarum, dried leaves, *Senna auriculata* (L.) Roxb	25B
Balm, fresh leaves, *Melissa officinalis* L	25A
Balm, dried leaves, *Melissa officinalis* L	25B
Balloon pea, fresh leaves, *Lessertia frutescens* (L.) Goldblatt & J.C. Manning	25A
Balloon pea, dried leaves, *Lessertia frutescens* (L.) Goldblatt & J.C. Manning	25B
Barrenwort, fresh leaves, *Epimedium grandiflorum* C. Morren	25A
Barrenwort, dried leaves, *Epimedium grandiflorum* C. Morren	25B
Basil, fresh leaves, *Ocimum basilicum* L	25A
Basil, dried leaves, *Ocimum basilicum* L	25B
Basil, American, fresh leaves, *Ocimum americanum* L	25A
Basil, American, dried leaves, *Ocimum americanum* L	25B
Basil, Greek, fresh leaves, *Ocimum minimum* L	25A
Basil, Greek, dried leaves, *Ocimum minimum* L	25B
Basil, holy, fresh leaves, *Ocimum tenuiflorum* L	25A
Basil, holy, dried leaves, *Ocimum tenuiflorum* L	25B
Basil, lemon, fresh leaves, *Ocimum x citriodorum* Vis	25A
Basil, lemon, dried leaves, *Ocimum x citriodorum* Vis	25B
Basil, Russian, fresh leaves, *Ocimum gratissimum* L	25A
Basil, Russian, dried leaves, *Ocimum gratissimum* L	25B
Bay, fresh leaves, *Laurus nobilis* L	25A
Bay, dried leaves, *Laurus nobilis* L	25B
Bisongrass, fresh leaves, *Anthoxanthum nitens* (Weber) Y. Schouten & Veldkamp	25A
Bisongrass, dried leaves, *Anthoxanthum nitens* (Weber) Y. Schouten & Veldkamp	25B
Blue mallow, fresh leaves, *Malva sylvestris* L	25A
Boneset, fresh leaves, *Eupatorium perfoliatum* L	25A
Boneset, dried leaves, *Eupatorium perfoliatum* L	25B
Borage, fresh leaves, *Borago officinalis* L	25A
Borage, dried leaves, *Borago officinalis* L	25B
Borage, Indian, fresh leaves, *Plectranthus amboinicus* (Lour.) Spreng	25A
Borage, Indian, dried leaves, *Plectranthus amboinicus* (Lour.) Spreng	25B
Burnet, fresh leaves, *Sanguisorba* spp	25A
Burnet, dried leaves, *Sanguisorba* spp	25B
Burnet, garden, fresh leaves, *Sanguisorba officinalis* L	25A
Burnet, garden, dried leaves, *Sanguisorba officinalis* L	25B
Burnet, salad, fresh leaves *Sanguisorba minor* Scop	25A
Burnet, salad, dried leaves *Sanguisorba minor* Scop	25B
Butterbur, dried leaves, *Petasites hybridus* (L.) G. Gaertn. Et al., *P. frigidus* (L.) Fr	25B
Calamint, fresh leaves, *Clinopodium* spp	25A
Calamint, dried leaves, *Clinopodium* spp	25B
Calamint, large-flower, fresh leaves, *Clinopodium grandiflorum* (L.) Kuntze	25A
Calamint, large-flower, dried leaves, *Clinopodium grandiflorum* (L.) Kuntze	25B
Calamint, lesser, fresh leaves, *Clinopodium nepeta* (L.) Kuntze	25A
Calamint, lesser, dried leaves, *Clinopodium nepeta* (L.) Kuntze	25B
Calendula, fresh leaves, *Calendula officinalis* L	25A
Calendula, dried leaves, *Calendula officinalis* L	25B
Caltrop, fresh leaves, *Tribulus terrestris* L	25A
Caltrop, dried leaves, *Tribulus terrestris* L	25B
Camomile (Chamomile), fresh leaves, *Chamaemelum* spp. and *Matricaria* spp	25A
Camomile (Chamomile), dried leaves, *Chamaemelum* spp. and *Matricaria* spp	25B
Camomile (Chamomile), German, fresh leaves, *Matricaria recutita* L	25A
Camomile (Chamomile), German, dried leaves, *Matricaria recutita* L	25B
Camomile (Chamomile), Roman, fresh leaves, *Chamaemelum nobile* (L.) AIL	25A
Camomile (Chamomile), Roman, dried leaves, *Chamaemelum nobile* (L.) AIL	25B

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroups
Caraway, fresh leaves, *Carum carvi* L	25A
Caraway, dried leaves, *Carum carvi* L	25B
Cat's claw, dried leaves, *Uncaria tomentosa* (Willd.) DC., *Uncaria guianensis* (Aubl.) J.F. GmeL	25B
Catnip, fresh leaves, *Nepeta cataria* L	25A
Catnip, dried leaves, *Nepeta cataria* L	25B
Catnip, Japanese, fresh leaves, *Schizonepeta multifida* (L.) Briq	25A
Catnip, Japanese, dried leaves, *Schizonepeta multifida* (L.) Briq	25B
Celandine, greater, fresh leaves, *Chelidonium majus* L	25A
Celandine, lesser, fresh leaves, *Ficaria verna* Huds	25A
Centaury, fresh leaves, *Centaurium erythrarae* Rafn	25A
Centaury, dried leaves, *Centaurium erythrarae* Rafn	25B
Chaste tree, fresh leaves, *Vitex agnus-castus* L	25A
Chaste tree, dried leaves, *Vitex agnus-castus* L	25B
Chervil, dried leaves, *Anthriscus cerefolium* (L.) Hoffm	25B
Chinese chastetree, dried leaves, *Vitex negundo* L	25B
Chinese foxglove, dried leaves, *Rehmannia glutinosa* (Gaertn.) Steud	25B
Chive, dried leaves, *Allium schoenoprasum* L	25B
Chive, Chinese, dried leaves, *Allium tuberosum* Rottler ex Spreng	25B
Cicely, sweet, fresh leaves, *Myrrhis odorata* (L.) Scop	25A
Cicely, sweet, dried leaves, *Myrrhis odorata* (L.) Scop	25B
Cilantro, dried leaves, *Coriandrum sativum* L	25B
Clary, fresh leaves, *Salvia sclarea* L	25A
Clary, dried leaves, *Salvia sclarea* L	25B
Coriander, Bolivian, fresh leaves, *Porophyllum ruderale* (Jacq.) Cass	25A
Coriander, Bolivian, dried leaves, *Porophyllum ruderale* (Jacq.) Cass	25B
Coriander, Vietnamese, fresh leaves, *Persicaria odorata* (Lour.) Sojak	25A
Coriander, Vietnamese, dried leaves, *Persicaria odorata* (Lour.) Sojak	25B
Costmary, fresh leaves, *Tanacetum balsamita* L. subsp. *Balsamita*	25A
Costmary, dried leaves, *Tanacetum balsamita* L. subsp. *Balsamita*	25B
Creat, dried leaves, *Andrographis paniculata* (Burm. f.) Wall. Ex Nees	25B
Culantro, fresh leaves, *Eryngium foetidum* L	25A
Culantro, dried leaves, *Eryngium foetidum* L	25B
Curry leaf, fresh leaves, *Bergera koenigii* L	25A
Curry leaf, dried leaves, *Bergera koenigii* L	25B
Curryplant, fresh leaves, *Helichrysum italicum* (Roth) G. Don	25A
Cut leaf, fresh leaves, *Prostanthera incisa* R. Br	25A
Cut leaf, dried leaves, *Prostanthera incisa* R. Br	25B
Dillweed, dried leaves, *Anethum graveolens* L	25B
Dokudami, fresh leaves, *Houttuynia cordata* Thunb	25A
Echinacea, dried leaves, *Echinacea angustifolia* DC	25B
Epazote, fresh leaves, *Dysphania ambrosioides* (L.) Mosyakin & Clemants	25A
Epazote, dried leaves, *Dysphania ambrosioides* (L.) Mosyakin & Clemants	25B
Eucommia, dried leaves, *Eucommia ulmoides* Oliv	25B
Evening primrose, fresh leaves, *Oenothera biennis* L	25A
Evening primrose, dried leaves, *Oenothera biennis* L	25B
Fennel, common, fresh leaves, *Foeniculum vulgare* Mill. Subsp. *vulgare* var. *vulgare*	25A
Fennel, common, dried leaves, *Foeniculum vulgare* Mill. Subsp. *vulgare* var. *vulgare*	25B
Fennel, Florence, dried leaves, *Foeniculum vulgare* Mill. Subsp. *vulgare* var. *azoricum* (Mill.) ThelL	25B
Fennel, Spanish, fresh leaves, *Nigella* spp	25A
Fennel, Spanish, dried leaves, *Nigella* spp	25B
Fenugreek, fresh leaves, *Trigonella foenum-graecum* L	25A
Fenugreek, dried leaves, *Trigonella foenum-graecum* L	25B
Feverfew, fresh leaves, *Tanacetum parthenium* (L.) Sch. Bip	25A
Feverfew, dried leaves, *Tanacetum parthenium* (L.) Sch. Bip	25B
Field pennycress, fresh leaves, *Thlaspi arvense* L	25A
Flowers, edible, fresh, multiple species	25A
Flowers, edible, dried, multiple species	25B
Fumitory, fresh leaves, *Fumaria officinalis* L	25A
Fumitory, dried leaves, *Fumaria officinalis* L	25B
Galbanum, dried leaves, *Ferula gummosa* Boiss	25B
Gambir, fresh leaves, *Uncaria gambir* (W. Hunter) Roxb	25A
Geranium, fresh leaves, *Pelargonium* spp	25A
Geranium, dried leaves, *Pelargonium* spp	25B
Geranium, lemon, fresh leaves, *Pelargonium crispum* (P. J. Bergius) L'Her	25A
Geranium, lemon, dried leaves, *Pelargonium crispum* (P. J. Bergius) L'Her	25B
Geranium, rose, fresh leaves, *Pelargonium graveolens* L'Her	25A
Geranium, rose, dried leaves, *Pelargonium graveolens* L'Her	25B
Germander, golden, fresh leaves, *Teucrium polium* L	25A
Germander, golden, dried leaves, *Teucrium polium* L	25B
Gotu kola, dried leaves, *Centella asiatica* (L.) Urb	25B
Gumweed, fresh leaves, *Grindelia camporum* Greene	25A

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroups
Gumweed, dried leaves, *Grindelia camporum* Greene	25B
Gymnema, dried leaves, *Gymnema sylvestre* (Retz.) Schult	25B
Gypsywort, fresh leaves, *Lycopus europaeus* L	25A
Gypsywort, dried leaves, *Lycopus europaeus* L	25B
Heal-all, fresh leaves, *Prunella vulgaris* L	25A
Heal-all, dried leaves, *Prunella vulgaris* L	25B
Honewort, fresh leaves, *Cryptotaenia canadensis* (L.) DC	25A
Honeybush, dried leaves, *Cyclopia genistoides* (L.) R. Br	25B
Horehound, fresh leaves, *Marrubium vulgare* L	25A
Horehound, dried leaves, *Marrubium vulgare* L	25B
Horsemint, fresh leaves, *Mentha longifolia* (L.) Huds	25A
Horsemint, dried leaves, *Mentha longifolia* (L.) Huds	25B
Hyssop, fresh leaves, *Hyssopus officinalis* L	25A
Hyssop, dried leaves, *Hyssopus officinalis* L	25B
Hyssop, anise, fresh leaves, *Agastache foeniculum* (Pursh) Kuntze	25A
Hyssop, anise, dried leaves, *Agastache foeniculum* (Pursh) Kuntze	25B
Jasmine, fresh leaves, *Jasminum officinale* L., *J. odoratissimum* L	25A
Jasmine, dried leaves, *Jasminum officinale* L., *J. odoratissimum* L	25B
Labrador tea, fresh leaves, *Rhododendron groenlandicum* (Oeder) Kron & Judd, *R. tomentosum* Harmaja	25A
Labrador tea, dried leaves, *Rhododendron groenlandicum* (Oeder) Kron & Judd, *R. tomentosum* Harmaja	25B
Lavender, fresh leaves, *Lavandula angustifolia* MilL	25A
Lavender, dried leaves, *Lavandula angustifolia* MilL	25B
Lemongrass, fresh leaves, *Cymbopogon citratus* (DC.) Stapf	25A
Lemongrass, dried leaves, *Cymbopogon citratus* (DC.) Stapf	25B
Lemon verbena, fresh leaves, *Aloysia citrodora* Palau	25A
Lemon verbena, dried leaves, *Aloysia citrodora* Palau	25B
Lovage, fresh leaves, *Levisticum officinale* W.D.J. Koch	25A
Lovage, dried leaves, *Levisticum officinale* W.D.J. Koch	25B
Love-in-a-mist, fresh leaves, *Nigella damascena* L	25A
Love-in-a-mist, dried leaves, *Nigella damascena* L	25B
Mamaki, dried leaves, *Pipturus arborescens* (Link) C.B. Rob	25B
Marigold, fresh leaves, *Tagetes* spp	25A
Marigold, dried leaves, *Tagetes* spp	25B
Marigold, African, fresh leaves, *Tagetes erecta* L	25A
Marigold, African, dried leaves, *Tagetes erecta* L	25B
Marigold, Aztec, fresh leaves, *Tagetes minuta* L	25A
Marigold, Aztec, dried leaves, *Tagetes minuta* L	25B
Marigold, French, fresh leaves, *Tagetes patula* L	25A
Marigold, French, dried leaves, *Tagetes patula* L	25B
Marigold, Irish lace, fresh leaves, *Tagetes filifolia* Lag	25A
Marigold, Irish lace, dried leaves, *Tagetes filifolia* Lag	25B
Marigold, licorice, fresh leaves, *Tagetes micrantha* Cav	25A
Marigold, licorice, dried leaves, *Tagetes micrantha* Cav	25B
Marigold, Mexican mint, fresh leaves, *Tagetes lucida* Cav	25A
Marigold, Mexican mint, dried leaves, *Tagetes lucida* Cav	25B
Marigold, signet, fresh leaves, *Tagetes tenuifolia* Cav	25A
Marigold, signet, dried leaves, *Tagetes tenuifolia* Cav	25B
Marjoram, fresh leaves, *Origanum* spp	25A
Marjoram, dried leaves, *Origanum* spp	25B
Marjoram, pot, fresh leaves, *Origanum onites* L	25A
Marjoram, pot, dried leaves, *Origanum onites* L	25B
Marjoram, sweet, fresh leaves, *Origanum majorana* L	25A
Marjoram, sweet, dried leaves, *Origanum majorana* L	25B
Marshmallow, fresh leaves, *Althaea officinalis* L	25A
Marshmallow, dried leaves, *Althaea officinalis* L	25B
Meadowsweet, fresh leaves, *Filipendula ulmaria* (L.) Maxim	25A
Meadowsweet, dried leaves, *Filipendula ulmaria* (L.) Maxim	25B
Mint, fresh leaves, *Mentha* spp	25A
Mint, dried leaves, *Mentha* spp	25B
Mint, corn, fresh leaves, *Mentha arvensis* L	25A
Mint, corn, dried leaves, *Mentha arvensis* L	25B
Mint, Korean, fresh leaves, *Agastache rugosa* (Fisch. & C.A. Mey.) Kun	25A
Mint, Korean, dried leaves, *Agastache rugosa* (Fisch. & C.A. Mey.) Kun	25B
Monarda, fresh leaves, *Monarda* spp	25A
Monarda, dried leaves, *Monarda* spp	25B
Motherwort, fresh leaves, *Leonurus cardiaca* L	25A
Motherwort, dried leaves, *Leonurus cardiaca* L	25B
Mountainmint, fresh leaves, *Pycnanthemum* spp	25A
Mountainmint, dried leaves, *Pycnanthemum* spp	25B
Mountainmint, clustered, fresh leaves, *Pycnanthemum muticum* (Michx.) Pers	25A
Mountainmint, clustered, dried leaves, *Pycnanthemum muticum* (Michx.) Pers	25B

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroups
Mountainmint, hoary, fresh leaves, *Pycnanthemum incanum* Michx	25A
Mountainmint, hoary, dried leaves, *Pycnanthemum incanum* Michx	25B
Mountainmint, Virginia, fresh leaves, *Pycnanthemum virginianum* (L.) T. Durand & B.D. Jacks. Ex B.L. Rob. & FernaL	25A
Mountainmint, Virginia, dried leaves, *Pycnanthemum virginianum* (L.) T. Durand & B.D. Jacks. ex B.L. Rob. & FernaL	25B
Mountainmint, whorled, fresh leaves, *Pycnanthemum verticillatum* (Michx.) Pers	25A
Mountainmint, whorled, dried leaves, *Pycnanthemum verticillatum* (Michx.) Pers	25B
Mugwort, fresh leaves, *Artemisia vulgaris* L	25A
Mugwort, dried leaves, *Artemisia vulgaris* L	25B
Mulberry, white, dried leaves, *Morus alba* L	25B
Mullein, fresh leaves, *Verbascum densiflorum* Bertol., *Verbascum* spp	25A
Mullein, dried leaves, *Verbascum densiflorum* Bertol., *Verbascum* spp	25B
Nasturtium, fresh leaves, *Tropaeolum* spp	25A
Nasturtium, dried leaves, *Tropaeolum* spp	25B
Nasturtium, bush fresh leaves, *Tropaeolum minus* L	25A
Nasturtium, bush dried leaves, *Tropaeolum minus* L	25B
Nasturtium, garden, fresh leaves, *Tropaeolum majus* L	25A
Nasturtium, garden, dried leaves, *Tropaeolum majus* L	25B
Nettle, fresh leaves, *Urtica dioica* L	25A
Nettle, dried leaves, *Urtica dioica* L	25B
Oregano, fresh leaves, *Origanum vulgare* L	25A
Oregano, dried leaves, *Origanum vulgare* L	25B
Oregano, Mexican, fresh leaves, *Lippia graveolens* Kunth	25A
Oregano, Mexican, dried leaves, *Lippia graveolens* Kunth	25B
Oregano, Puerto Rico, fresh leaves, *Lippia micromera* Schauer	25A
Oregano, Puerto Rico, dried leaves, *Lippia micromera* Schauer	25B
Oswego tea, fresh leaves, *Monarda didyma* L	25A
Oswego tea, dried leaves, *Monarda didyma* L	25B
Pandan leaf, fresh leaves, *Pandanus amaryllifolius,* Roxb	25A
Pandan leaf, dried leaves, *Pandanus amaryllifolius,* Roxb	25B
Pansy, fresh leaves, *Viola tricolor* L	25A
Pansy, dried leaves, *Viola tricolor* L	25B
Paracress, fresh leaves, *Acmella oleracea* (L.) R.K. Jansen	25A
Paracress, dried leaves, *Acmella oleracea* (L.) R.K. Jansen	25B
Parsley, dried leaves, *Petroselinum crispum* (Mill.) Fuss	25B
Pennyroyal, fresh leaves, *Mentha pulegium* L	25A
Pennyroyal, dried leaves, *Mentha pulegium* L	25B
Peppermint, fresh leaves, *Mentha x piperita* L	25A
Peppermint, dried leaves, *Mentha x piperita* L	25B
Perilla, fresh leaves, *Perilla frutescens* (L.) Britton	25A
Perilla, dried leaves, *Perilla frutescens* (L.) Britton	25B
Rooibos, dried leaves, *Aspalathus linearis* (Burm. f.) R. Dahlgren	25B
Rose, fresh leaves, *Rosa* spp	25A
Rose, dried leaves, *Rosa* spp	25B
Rosemary, fresh leaves, *Rosmarinus officinalis* L	25A
Rosemary, dried leaves, *Rosmarinus officinalis* L	25B
Sage, fresh leaves, *Salvia officinalis* L	25A
Sage, dried leaves, *Salvia officinalis* L	25B
Sage, Greek, fresh leaves, *Salvia fruticosa* MilL	25A
Sage, Greek, dried leaves, *Salvia fruticosa* MilL	25B
Sage, Spanish, fresh leaves, *Salvia lavandulifolia* Vahl	25A
Sage, Spanish, dried leaves, *Salvia lavandulifolia* Vahl	25B
Savory, summer, fresh leaves, *Satureja hortensis* L	25A
Savory, summer, dried leaves, *Satureja hortensis* L	25B
Savory, winter, fresh leaves, *Satureja montana* L	25A
Savory, winter, dried leaves, *Satureja montana* L	25B
Sorrel, fresh leaves, *Rumex* spp	25A
Sorrel, dried leaves, *Rumex* spp	25B
Sorrel, French, fresh leaves, *Rumex scutatus* L	25A
Sorrel, French, dried leaves, *Rumex scutatus* L	25B
Sorrel, garden, fresh leaves, *Rumex acetosa* L	25A
Sorrel, garden, dried leaves, *Rumex acetosa* L	25B
Southernwood, fresh leaves, *Artemisia abrotanum* L	25A
Southernwood, dried leaves, *Artemisia abrotanum* L	25B
Spearmint, fresh leaves, *Mentha spicata* L	25A
Spearmint, dried leaves, *Mentha spicata* L	25B
Spearmint, Scotch, fresh leaves, *Mentha x gracilis* SoL	25A
Spearmint, Scotch, dried leaves, *Mentha x gracilis* SoL	25B
Spotted beebalm, fresh leaves, *Monarda punctata* L	25A
Spotted beebalm, dried leaves, *Monarda punctata* L	25B
Squaw vine, dried leaves, *Mitchella repens* L	25B
St. John's Wort, dried leaves, *Hypericum perforatum* L	25B

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroups
Stevia, dried leaves, *Stevia rebaudiana* (Bertoni) Bertoni	25B
Swamp leaf, fresh leaves, *Limnophila chinensis* (Osbeck) Merr	25A
Tansy, fresh leaves, *Tanacetum vulgare* L	25A
Tansy, dried leaves, *Tanacetum vulgare* L	25B
Tarragon, fresh leaves, *Artemisia dracunculus* L	25A
Tarragon, dried leaves, *Artemisia dracunculus* L	25B
Thyme, fresh leaves, *Thymus* spp	25A
Thyme, dried leaves, *Thymus* spp	25B
Thyme, creeping, fresh leaves, *Thymus serpyllum* L	25A
Thyme, creeping, dried leaves, *Thymus serpyllum* L	25B
Thyme, lemon, fresh leaves, *Thymus* x *citriodorus* (Pers.) Schreb	25A
Thyme, lemon, dried leaves, *Thymus* x *citriodorus* (Pers.) Schreb	25B
Thyme, mastic, fresh leaves, *Thymus mastichina* (L.) L	25A
Thyme, mastic, dried leaves, *Thymus mastichina* (L.) L	25B
Toon, Chinese, fresh leaves, *Toona sinensis* (A. Juss.) M. Roem	25A
Toon, Chinese, dried leaves, *Toona sinensis* (A. Juss.) M. Roem	25B
Vasaka, dried leaves, *Justicia adhatoda* L	25B
Veronica, fresh leaves, *Veronica officinalis* L	25A
Violet, fresh leaves, *Viola odorata* L	25A
Violet, dried leaves, *Viola odorata* L	25B
Watermint, fresh leaves, *Mentha aquatica* L	25A
Watermint, dried leaves, *Mentha aquatica* L	25B
Waterpepper, fresh leaves, *Persicaria hydropiper* (L.) Delarbre	25A
Wild bergamot, fresh leaves, *Monarda fistulosa* L	25A
Wild bergamot, dried leaves, *Monarda fistulosa* L	25B
Wintergreen, fresh leaves, *Gaultheria procumbens* L	25A
Wintergreen, dried leaves, *Gaultheria procumbens* L	25B
Wood betony, dried leaves, *Stachys officinalis* (L.) Trevis	25B
Woodruff, fresh leaves, *Galium odoratum* (L.) Scop	25A
Woodruff, dried leaves, *Galium odoratum* (L.) Scop	25B
Wormwood, fresh leaves, *Artemisia absinthium* L	25A
Wormwood, dried leaves, *Artemisia absinthium* L	25B
Wormwood, Roman, fresh leaves, *Artemisia pontica* L	25A
Wormwood, Roman, dried leaves, *Artemisia pontica* L	25B
Yarrow, fresh leaves, *Achillea millefolium* L	25A
Yarrow, dried leaves, *Achillea millefolium* L	25B
Yellow gentian, fresh leaves, *Gentiana lutea* L	25A
Yellow gentian, dried leaves, *Gentiana lutea* L	25B
Yerba santa, fresh leaves, *Eriodictyon californicum* (Hook. & Arn.) Torr	25A
Yerba santa, dried leaves, *Eriodictyon californicum* (Hook. & Arn.) Torr	25B
Yomogi, fresh leaves, *Artemisia princeps* L	25A
Yomogi, dried leaves, *Artemisia princeps* L	25B
Cultivars, varieties, and hybrids of these commodities	

(iii) *Crop subgroups.* The following Table 2 identifies the crop subgroups for Crop Group 25, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 25: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 25A. Herb Fresh Leaves Subgroup	
Basil, fresh leaves and mint, fresh leaves.	Agrimony, fresh leaves; Angelica, fresh leaves; Angelica, fragrant, fresh leaves; Applemint, fresh leaves; Avarum, fresh leaves; Balloon pea, fresh leaves; Barrenwort, fresh leaves; Balm, fresh leaves; Basil, fresh leaves; Basil, American, fresh leaves; Basil, Greek, fresh leaves; Basil, holy, fresh leaves; Basil, lemon, fresh leaves; Basil, Russian, fresh leaves; Bay, fresh leaves; Bisongrass, fresh leaves; Blue mallow, fresh leaves; Boneset, fresh leaves; Borage, fresh leaves; Borage, Indian, fresh leaves; Burnet, fresh leaves; Burnet, garden, fresh leaves; Burnet, salad, fresh leaves; Calamint, fresh leaves; Calamint, large-flower, fresh leaves; Calamint, lesser, fresh leaves; Calendula, fresh leaves; Caltrop, fresh leaves; Camomile, fresh leaves; Camomile, German, fresh leaves; Camomile, Roman, fresh leaves; Caraway, fresh leaves; Catnip, fresh leaves; Catnip, Japanese, fresh leaves; Celandine, greater, fresh leaves; Celandine, lesser, fresh leaves; Centaury, fresh leaves; Chaste tree, fresh leaves; Cicely, sweet, fresh leaves; Clary, fresh leaves; Coriander, Bolivian, fresh leaves; Coriander, Vietnamese, fresh leaves; Costmary, fresh leaves; Culantro, fresh leaves; Curry leaf, fresh leaves; Curryplant, fresh leaves; Cut leaf, fresh leaves; Dokudami, fresh leaves; Epazote, fresh leaves; Evening primrose, fresh leaves; Fennel, common, fresh leaves; Fennel, Spanish, fresh leaves; Fenugreek, fresh leaves; Feverfew, fresh leaves; Field pennycress, fresh leaves; Flowers, edible, fresh; Fumitory, fresh leaves; Gambir, fresh leaves; Geranium, fresh leaves; Geranium, lemon, fresh leaves; Geranium, rose, fresh leaves; Germander, golden, fresh leaves; Gumweed, fresh leaves; Gypsywort, fresh leaves; Heal-all, fresh leaves; Honewort, fresh leaves; Horehound, fresh leaves; Horsemint, fresh leaves; Hyssop, fresh leaves; Hyssop, anise, fresh leaves; Jasmine, fresh leaves; Labrador tea, fresh leaves; Lavender, fresh leaves; Lemongrass, fresh leaves; Lemon verbena, fresh leaves; Lovage, fresh leaves; Love-in-a-mist, fresh leaves; Marigold, fresh leaves; Marigold, African, fresh leaves; Marigold, Aztec, fresh leaves; Marigold, French, fresh leaves; Marigold, Irish lace, fresh leaves; Marigold, licorice, fresh leaves; Marigold, Mexican mint, fresh leaves; Marigold, signet, fresh leaves; Marjoram, fresh leaves; Marjoram, pot, fresh leaves; Marjoram, sweet, fresh leaves; Marshmallow, fresh leaves; Meadowsweet, fresh leaves; Mint, fresh leaves; Mint, corn, fresh leaves; Mint, Korean, fresh leaves; Monarda, fresh leaves; Motherwort, fresh leaves; Mountainmint, fresh leaves; Mountainmint, clustered, fresh leaves; Mountainmint, hoary, fresh leaves; Mountainmint, Virginia, fresh leaves; Mountainmint, whorled, fresh leaves; Mugwort, fresh leaves; Mullein, fresh leaves; Nasturtium, fresh leaves; Nasturtium, bush, fresh leaves; Nasturtium, garden, fresh leaves; Nettle, fresh leaves; Oregano, fresh leaves; Oregano, Mexican, fresh leaves; Oregano, Puerto Rico, fresh leaves; Oswego tea, fresh leaves; Pandan leaf, fresh leaves; Pansy, fresh leaves; Paracress, fresh leaves; Pennyroyal, fresh leaves; Peppermint, fresh leaves; Perilla, fresh leaves; Rose, fresh leaves; Rosemary, fresh leaves; Sage, fresh leaves; Sage, Greek, fresh leaves; Sage, Spanish, fresh leaves; Savory, summer, fresh leaves; Savory, winter, fresh leaves; Sorrel, fresh leaves; Sorrel, French, fresh leaves; Sorrel, garden, fresh leaves; Southernwood, fresh leaves; Spearmint, fresh leaves; Spearmint, Scotch, fresh leaves; Spotted beebalm, fresh leaves; Swamp leaf, fresh leaves; Tansy, fresh leaves; Tarragon, fresh leaves; Thyme, fresh leaves; Thyme, creeping, fresh leaves; Thyme, lemon, fresh leaves; Thyme, mastic, fresh leaves; Toon, Chinese, fresh leaves; Veronica, fresh leaves; Violet, fresh leaves; Watermint, fresh leaves; Waterpepper, fresh leaves; Wild bergamot, fresh leaves; Wintergreen, fresh leaves; Woodruff, fresh leaves; Wormwood, fresh leaves; Wormwood, Roman, fresh leaves; Yarrow, fresh leaves; Yellow gentian, fresh leaves; Yerba santa, fresh leaves; Yomogi, fresh leaves; cultivars, varieties, and/or hybrids of these.

TABLE 2—CROP GROUP 25: SUBGROUP LISTING—Continued

Representative commodities	Commodities
Crop Subgroup 25B. Herb Dried Leaves Subgroup	
Basil, dried leaves and mint, dried leaves.	Agrimony, dried leaves; Angelica, dried leaves; Angelica, fragrant, dried leaves; Applemint, dried leaves; Avarum, dried leaves; Balloon pea, dried leaves; Balm, dried leaves; Barrenwort, dried leaves; Basil, dried leaves; Basil, American, dried leaves; Basil, Greek, dried leaves; Basil, holy, dried leaves; Basil, lemon, dried leaves; Basil, Russian, dried leaves; Bay, dried leaves; Bisongrass, dried leaves; Boneset, dried leaves; Borage, dried leaves; Borage, Indian, dried leaves; Burnet, dried leaves; Burnet, garden, dried leaves; Burnet, salad, dried leaves; Butterbur, dried leaves; Calamint, dried leaves; Calamint, large-flower, dried leaves; Calamint, lesser, dried leaves; Calendula, dried leaves; Caltrop, dried leaves; Camomile, dried leaves; Camomile, German, dried leaves; Camomile, Roman, dried leaves; Caraway, dried leaves; Cat's claw, dried leaves; Catnip, dried leaves; Catnip, Japanese, dried leaves; Centaury, dried leaves; Chaste tree, dried leaves; Chervil, dried leaves; Chinese chastetree, dried leaves; Chinese foxglove, dried leaves; Chive, dried leaves; Chive, Chinese, dried leaves; Cicely, sweet, dried leaves; Cilantro, dried leaves; Clary, dried leaves; Coriander, Bolivian, dried leaves; Coriander, Vietnamese, dried leaves; Costmary, dried leaves; Creat, dried leaves; Culantro, dried leaves; Curry leaf, dried leaves; Cut leaf, dried leaves; Dillweed, dried leaves; Echinacea, dried leaves; Epazote, dried leaves; Eucommia, dried leaves; Evening primrose, dried leaves; Fennel, common, dried leaves; Fennel, Florence, dried leaves; Fennel, Spanish, dried leaves; Fenugreek, dried leaves; Feverfew, dried leaves; Flowers, edible, dried; Fumitory, dried leaves; Geranium, dried leaves; Geranium, lemon, dried leaves; Geranium, rose, dried leaves; Germander, golden, dried leaves; Gotu kola, dried leaves; Gumweed, dried leaves; Gymnema, dried leaves; Gypsywort, dried leaves; Heal-all, dried leaves; Honeybush, dried leaves; Horehound, dried leaves; Horsemint, dried leaves; Hyssop, dried leaves; Hyssop, anise, dried leaves; Jasmine, dried leaves; Labrador, tea, dried leaves; Lavender, dried leaves; Lemongrass, dried leaves; Lemon verbena, dried leaves; Lovage, dried leaves; Love-in-a-mist, dried leaves; Mamaki, dried leaves; Marigold, dried leaves; Marigold, African, dried leaves; Marigold, Aztec, dried leaves; Marigold, French, dried leaves; Marigold, Irish lace, dried leaves; Marigold, licorice, dried leaves; Marigold, Mexican mint, dried leaves; Marigold, signet, dried leaves; Marjoram, dried leaves; Marjoram, pot, dried leaves; Marjoram, sweet, dried leaves; Marshmallow, dried leaves; Meadowsweet, dried leaves; Mint, dried leaves; Mint, corn, dried leaves; Mint, Korean, dried leaves; Monarda, dried leaves; Motherwort, dried leaves; Mountainmint, dried leaves; Mountainmint, clustered, dried leaves; Mountainmint, hoary, dried leaves; Mountainmint, Virginia, dried leaves; Mountainmint, whorled, dried leaves; Mugwort, dried leaves; Mulberry, white, dried leaves; Mullein, dried leaves; Nasturtium, dried leaves; Nasturtium, bush dried leaves; Nasturtium, garden, dried leaves; Nettle, dried leaves; Oregano, dried leaves; Oregano, Mexican, dried leaves; Oregano, Puerto Rico, dried leaves; Oswego tea, dried leaves; Pandan leaf, dried leaves; Pansy, dried leaves; Paracress, dried leaves; Parsley, dried leaves; Pennyroyal, dried leaves; Peppermint, dried leaves; Perilla, dried leaves; Rooibos, dried leaves; Rose, dried leaves; Rosemary, dried leaves; Sage, dried leaves; Sage, Greek, dried leaves; Sage, Spanish, dried leaves; Savory, summer, dried leaves; Savory, winter, dried leaves; Sorrel, dried leaves; Sorrel, French, dried leaves; Sorrel, garden, dried leaves; Southernwood, dried leaves; Spearmint, dried leaves; Spearmint, Scotch, dried leaves; Spotted beebalm, dried leaves; Squaw vine, dried leaves; St. John's Wort, dried leaves; Stevia, dried leaves; Tansy, dried leaves; Tarragon, dried leaves; Thyme, dried leaves; Thyme, creeping, dried leaves; Thyme, lemon, dried leaves; Thyme, mastic, dried leaves; Toon, Chinese, dried leaves; Vasaka, dried leaves; Violet, dried leaves; Watermint, dried leaves; Wild bergamot, dried leaves; Wintergreen, dried leaves; Wood betony, dried leaves; Woodruff, dried leaves; Wormwood, dried leaves; Wormwood, Roman, dried leaves; Yarrow, dried leaves; Yellow gentian, dried leaves; Yerba santa, dried leaves; Yomogi, dried leaves; cultivars, varieties, and/or hybrids of these.

(35) *Crop Group 26.* Spice Group.

(i) *Representative commodities.* Dill seed or Celery seed.

(ii) *Commodities.* The following Table 1 lists all commodities included in Crop Group 26.

TABLE 1—CROP GROUP 26: SPICE GROUP

Commodities
Ajowan, seed, *Trachyspermum ammi* (L.) Sprague ex Turrill
Allspice, *Pimenta dioica* (L.) Merr.
Ambrette seed, *Abelmoschus esculentus* (L.) Moench
Amia, *Phyllanthus amarus* Schumach
Angelica, seed, *Angelica archangelica* L.
Angostura bark, *Angostura trifoliata* (Willd.) T.S. Elias
Anise seed, *Pimpinella anisum* L.
Anise pepper, *Zanthoxylum piperitum* (L.) DC.
Anise, star, *Illicium verum* Hook. f.
Annatto seed, *Bixa orellana* L.
Asafoetida, *Ferula assa-foetida* L.
Ashwagandha, fruit, *Withania somnifera* (L.) Dunal
Balsam, Peruvian, *Myroxylon balsamum* (L.) Harms var. *pereirae* (Royle) Harms
Batavia-cassia, bark, *Cinnamomum burmanni* (Nees & T. Nees) Blume
Batavia-cassia, fruit, *Cinnamomum burmanni* (Nees & T. Nees) Blume
Belleric myrobalan, *Terminalia bellirica* (Gaertn.) Roxb.
Betel vine, *Piper betle* L.

TABLE 1—CROP GROUP 26: SPICE GROUP—Continued

Commodities
Black bread weed, *Nigella arvensis* L.
Blue mallee, *Eucalyptus polybractea* R.T. Baker
Boldo, leaves, *Peumus boldus* Molina
Buchi, *Agathosma betulina* (P.J. Bergius) Pillans
Calamus-root, *Acorus calamus* L.
Candlebush, *Senna alata* (L.) Roxb.
Canella bark, *Canella winterana* (L.) Gaertn.
Caper buds, *Capparis spinosa* L.
Caraway, fruit, *Carum carvi* L.
Caraway, black, *Nigella sativa* L.
Cardamom, black, *Amomum* spp.
Cardamom, Ethiopian, *Aframomum corrorima* (A. Braun) P.C.M. Jansen
Cardamom, green, *Elettaria cardamomum* (L.) Maton
Cardamom, Nepal, *Amomum subulatum* Roxb., *Amomum aromaticum* Roxb.
Cardamon-amomum, *Amomum compactum* Sol. ex Maton
Cascada buckthorn, bark, *Frangula purshiana* (DC.) A. Gray
Cassia bark, *Cinnamomum* spp.
Cassia fruit, *Cinnamomum* spp.
Cassia, Chinese, fruit, *Cinnamomum aromaticum* Nees.
Cassia, Chinese, bark, *Cinnamomum aromaticum* Nees.
Cat's claw, roots, *Uncaria tomentosa* (Willd.) DC., *Uncaria guianensis* (Aubl.) J.F. Gmel.
Catechu, bark, *Senegalia catechu* (L.f.) P.J.H. Hurter & Mabb.
Celery seed, *Apium graveolens* var. *dulce* (Mill.) Pers.
Chervil, seed, *Anthriscus cerefolium* (L.) Hoffm.
Chaste treeberry, berry, *Vitex agnus-castus* L.
Chinese chastetree, roots, *Vitex negundo* L.
Chinese hawthorn, *Crataegus pinnatifida* Bunge
Chinese nutmeg tree, *Torreya grandis* Fortune
Chinese-pepper, *Zanthoxylum simulans* Hance
Chinese prickly-ash, *Zanthoxylum bungeanum* Maxim
Cinnamon, bark, *Cinnamomum verum* J. Presl
Cinnamon, fruit, *Cinnamomum verum* J. Presl
Cinnamon, Saigon, bark, *Cinnamomum loureiroi* Nees
Cinnamon, Saigon, fruit, *Cinnamomum loureiroi* Nees
Clove buds, *Syzygium aromaticum* (L.) Merr. & L.M. Perry
Copaiba, *Copaifera officinalis* (Jacq.) L.
Coptis, *Coptis chinensis* Franch., *Coptis* spp.
Coriander, fruit, *Coriandrum sativum* L.
Coriander, seed, *Coriandrum sativum* L.
Cubeb, seed, *Piper cubeba* L.f.
Culantro, seed, *Eryngium foetidum* L.
Cumin, *Cuminum cyminum* L
Cumin, black, *Bunium persicum* (Boiss.) B. Fedtsch.
Daharian angelica, leaves, *Angelica dahurica* (Hoffm.) Benth. & Hook. f. ex Franch. & Sav.
Daharian angelica, seed, *Angelica dahurica* (Hoffm.) Benth. & Hook. f. ex Franch. & Sav.
Damiana leaf, *Turnera diffusa* Willd.
Dill, seed, *Anethum graveolens* L.
Dorrigo pepper, berry, *Tasmannia stipitata* (Vick.) A.C. Smith
Dorrigo pepper, leaf, *Tasmannia stipitata* (Vick.) A.C. Smith
Epimedium, *Epimedium* spp.
Eucalyptus, *Eucalyptus* spp.
Eucommia, bark, *Eucommia ulmoides* Oliv.
Felty germander, *Teucrium polium* L.
Fennel, common, fruit, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare*
Fennel, common, seed, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare*
Fennel, Florence, fruit, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *azoricum* (Mill.) Thell.
Fennel, Florence, seed, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *azoricum* (Mill.) Thell.
Fennel flower, seed, *Nigella hispanica* L.
Fenugreek, seed, *Trigonella foenum-graecum* L.
Fingerroot, *Boesenbergia rotunda* (L.) Mansf.
Frankincense, *Boswellia sacra* Flueck.
Frankincense, Indian, *Boswellia serrata* Roxb. ex Colebr.
Galbanum, *Ferula gummosa* Boiss.
Gambooge, *Garcinia gummi-gutta* (L.) N. Robson
Grains of Paradise, *Aframomum melegueta* K. Schum.
Grains of Selim, *Xylopia aethiopica* (Dunal) A. Rich.
Guarana, *Paullinia cupana* Kunt
Guaiac, *Guaiacum officinale* L.
Guggul, *Commiphora wightii* (Arn.) Bhandari
Gum arabic, *Senegalia senegal* (L.) Britton
Gum ghatti, *Anogeissus latifolia* (Roxb. ex DC.) Wall. ex Guill. & Perr.
Gum karaya, *Stercula urens* Roxb.

TABLE 1—CROP GROUP 26: SPICE GROUP—Continued

Commodities
Gum tragacanth, *Astragalus gummifer* Labill.
Gymnema, dried leaves *Gymnema sylvestre* (Retz.) Schult.
Haw, black, *Viburnum prunifolium* L.
Honewort, seed, *Cryptotaenia canadensis* (L.) DC.
Imperatoria, *Peucedanum officinale* L.
Iva, *Achillea erba-rotta* All. subsp. *moschata* (Wulfen) I. Richardson
Jalap, *Ipomoea purga* (Wender.) Hayne
Juniper berry, *Juniperus communis* L.
Kaffir lime, leaf, *Citrus hystrix* DC.
Kewra, *Pandanus fascicularis* Lam.
Kokam, *Garcinia indica* (Thouars) Choisy
Linden, dried leaves, *Tilia americana* L.
Lovage, seed, *Levisticum officinale* W.D.J. Koch
Mace, *Myristica fragrans* Houtt.
Magnolia-bark, *Magnolia officinalis* Rehder & E.H. Wilson
Mahaleb, *Prunus mahaleb* L.
Malabar cardamom, *Amomum villosum* Lour.
Malabathrum, *Cinnamomum tamala* (Buch-Ham.) Nees & Eberm.
Malabar-tamarind, *Garcinia* spp.
Mastic, *Pistacia lentiscus* L.
Micromeria, white, *Micromeria fruticosa* (L.) Druce
Milk thistle, *Silybum marianum* (L.) Gaertn.
Mioga, *Zingiber mioga* (Thunb.) Roscoe
Miracle fruit, *Synsepalum dulcificum* (Schumach. & Thonn.) Daniell
Mustard seed, *Brassica* spp. and *Sinapis* spp.
Mustard, black, *Brassica nigra* (L.) W.D.J. Koch
Mustard, brown, *Brassica juncea* (L.) Czern. var. *juncea*
Mustard, white, *Sinapis alba* L. ssp. *alba*
Myrrh, *Commiphora myrrha* (Nees) Engl., *Commiphora africana* (A. Rich.) Engl.
Myrrh, bisabol, *Commiphora kataf* (Forssk.) Engl
Myrtle, dried leaves, *Myrtus communis* L.
Myrtle, anise, *Syzygium anisatum* (Vickery) Craven & Biffen
Myrtle, lemon, *Backhousia citriodora* F. Muell.
Nasturtium, pods, *Tropaeolum* spp
Nasturtium, bush, pods, *Tropaeolum minus* L.
Nasturtium, garden, pods, *Tropaeolum majus* L.
Nutmeg, *Myristica fragrans* Houtt.
Pepper, black, *Piper nigrum* L.
Pepper, white, *Piper nigrum* L.
Pepper, Cubeb, *Piper cubeba* L.f.
Pepper, Indian long, *Piper longum* L.
Pepper, leaf, *Piper auritum* Kunth, *Piper lolot* C.DC, *Piper sanctum* (Miq.) Schltdl., *Piper umbellatum* L.
Pepper, long, *Piper longum* L.
Pepper, Javanese Long, *Piper retrofractum* Vahl.
Pepper, Sichuan, *Zanthoxylum* spp.
Pepperbush, berry, *Tasmannia* spp.
Pepperbush, leaf, *Tasmannia* spp.
Peppertree, *Schinus* spp.
Peppertree, Brazilian, *Schinus terebinthifolius* Raddi
Peppertree, Peruvian, *Schinus molle* L.
Perilla leaf, *Perilla frutescens* (L.) Britton
Perilla seed, *Perilla frutescens* (L.) Britton
Pine, maritime, *Pinus pinaster* Aiton
Pipsissewa, leaves, *Chimaphila umbellata* (L.) W.P.C. Barton
Poppy seed, *Papaver somniferum* L. subsp. *somniferum*
Pygeum, *Prunus africana* (Hook.f.) Kalkman
Quassia, bark, *Quassia amara* L.
Quebracho bark, *Aspidosperma quebracho-blanco* Schltdl.
Quinine, *Cinchona pubescens* Vahl
Qing hua jiao, *Zanthoxylum schinifolium* Siebold & Zucc
Quillaja, *Quillaja saponaria* Molina
Rue, *Ruta graveolens* L
Saffron crocus, *Crocus sativus* L.
Sassafras, leaves, *Sassafras albidum* (Nutt.) Nees
Saunders, red, *Pterocarpus santalinus* L.f.
Simaruba, bark, *Simarouba amara* Aubl.
Slippery elm, *Ulmus rubra* Muhl.
Sumac, fragrant, *Rhus aromatica* Aiton
Sumac, smooth leaf, *Rhus glabra* L.
Tasmanian pepper berry, *Tasmannia lanceolata* (Poir.) A.C. Sm
Tasmanian pepper leaf, *Tasmannia lanceolata* (Poir.) A.C. Sm.
Tsao-Ko, *Amomum tsao-ko* Crevost & Lemarié

TABLE 1—CROP GROUP 26: SPICE GROUP—Continued

Commodities
Vanilla, *Vanilla planifolia* Jacks.
Wattleseed, *Acacia* spp.
White willow, *Salix alba* L.
Willow, *Salix* spp.
Yellow gentian, roots, *Gentiana lutea* L.
Cultivars, varieties, and hybrids of these commodities.

[FR Doc. 2019–18285 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2019–0066]

RIN 2126–AC26

Fees for the Unified Carrier Registration Plan and Agreement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes reductions in the annual registration fees States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2020, 2021, and subsequent registration years. The proposed fees for the 2020 registration year would be reduced below the 2018 registration fee level that was in effect by approximately 12.82 percent to ensure that fee revenues do not exceed the statutory maximum, and to account for the various excess funds held in the depository. The proposed fees for the 2021 registration year would be reduced below the 2018 level by approximately 4.19 percent. The reduction of the current 2019 registration year fees (finalized on December 28, 2018) would range from approximately $2 to $1,629 per entity, depending on the number of vehicles owned or operated by the affected entities.

DATES: Comments on this notice of proposed rulemaking (NPRM) must be received on or before September 6, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2019–0066 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Folsom, Office of Registration and Safety Information, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 by telephone at 202–385–2405. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2019–0066), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2019–0066, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

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.'' FMCSA will treat such marked submissions as confidential under the FOIA, and will not place them in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590. Any comment that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2019–0066, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility 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., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

D. Advance Notice of Proposed Rulemaking Not Required

Under 49 U.S.C. 31136(g), added by section 5202 of the Fixing America's Surface Transportation or FAST Act, Public Law 114–94, 129 Stat.1312, 1534 (Dec. 4, 2015), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or conduct a negotiated rulemaking ''if a proposed rule is likely to lead to the promulgation of a major rule.'' 49 U.S.C. 31136(g)(1). As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. Executive Summary

A. Purpose and Summary of the Major Provisions

The UCR Plan and the 41 States participating in the UCR Agreement establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement are administered by a 15-member board of directors; 14 appointed from the participating States and the industry, plus the Deputy Administrator of FMCSA. Revenues collected are allocated to the participating States and the UCR Plan. In accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), fee adjustments must be requested by the UCR Plan when annual revenues exceed the maximum allowed. Also, if there are excess funds after payments to the States and for administrative costs, they are retained in the UCR Plan's depository and subsequent fees must be reduced as required by 49 U.S.C. 14504a(h)(4). These two distinct provisions are the reasons for the two-stage adjustment proposed in this rule. This NPRM proposes to reduce the annual registration fees established pursuant to the UCR Agreement for 2020, 2021, and subsequent years.

Currently the UCR Plan estimates that by December 31, 2019, total revenues will exceed the statutory maximum for the 2018 registration year by approximately $3.08 million. In addition, the UCR Plan determined that additional excess funds were collected for both the 2015 and the 2016 registration years that are being held in its depository. Therefore, in February 2019, the UCR Plan made a formal recommendation that FMCSA adjust the fees in a two-stage process. The proposed fees for the 2020 registration year, with collection beginning on or about October 1, 2019, would be reduced below the 2018 registration fee level that was in effect by approximately 12.82 percent to ensure that fee revenues do not exceed the statutory maximum, and to reduce the excess funds held in the depository, that also includes excess revenues for 2015 and 2016 not recognized during prior rulemakings. The proposed fees for the 2021 registration year, with collection beginning on or about October 1, 2020, would be reduced below the 2018 level by approximately 4.19 percent to ensure that fee revenues in the 2021 registration year and future years do not exceed the statutory maximum. The UCR Plan requested that the adjusted fees be adopted no later than August 31, 2019, to enable the participating States and the UCR Plan to reflect the new fees when collections for the 2020 registration year begin on or about October 1, 2019. The adoption of the adjusted fees must be accomplished through rulemaking by FMCSA under authority delegated from the Secretary of Transportation (Secretary).

The UCR Plan's formal recommendation requested that FMCSA publish a rule reducing the fees paid per motor carrier, motor private carrier of property, broker, freight forwarder, and leasing company based on an analysis of current collections and past trends. The UCR Plan's recommendation reduces fees based on collections over the statutory cap in 2018, and includes a reduction in the amount of the administrative cost allowance from $3,500,000 to $3,225,000 for the 2020 and 2021 UCR Agreement registration years. The Board completed an analysis estimating the amount of administrative cost allowance needed for the 2020 and 2021 registration period and has determined that an allowance of $3,225,000 will be needed each year for those registration years. The Agency reviewed the UCR Plan's formal recommendation and concluded that the UCR Plan's projection of the total revenues received for registration year 2018 is acceptable.

B. Benefits and Costs

The changes proposed in this NPRM would reduce the fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan and the participating States. While each motor carrier would realize a reduced burden, fees are considered by the Office of Management and Budget (OMB) Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. Therefore, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

III. Abbreviations and Acronyms

The following is a list of abbreviations and acronyms used in this document.

ANPRM Advance Notice of Proposed Rulemaking
CAA Clean Air Act
CBI Confidential Business Information
CE Categorical Exclusion
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
Secretary Secretary of Transportation
SBREFA Small Business Regulatory Enforcement Fairness Act
SSRS Single State Registration System
UCR Unified Carrier Registration
UCR Agreement Unified Carrier Registration Agreement
UCR Plan Unified Carrier Registration Plan

IV. Legal Basis for the Rulemaking

This rule proposes to adjust the annual registration fees required by the UCR Agreement established by 49 U.S.C. 14504a. The requested fee adjustments are required by 49 U.S.C. 14504a because, for registration year 2018, the total revenues collected are expected to exceed the total revenue entitlements of $107.78 million distributed to the 41 participating States plus the $5 million established at that time for the administrative costs

associated with the UCR Plan and Agreement. The requested adjustments have been submitted by the UCR Plan in accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), which requires the UCR Plan to request an adjustment by the Secretary when the annual revenues exceed the maximum allowed. In addition, 49 U.S.C. 14504a(h)(4) states that any excess funds held by the UCR Plan in its depository, after payments to the States and for administrative costs, shall be retained ''and the fees charged . . . shall be reduced by the Secretary accordingly.''

The UCR Plan is also requesting approval of a revised total revenue to be collected because of a reduction in the amount for costs of administering the UCR Agreement. No changes in the revenue allocations to the participating States have been recommended by the UCR Plan. The revised total revenue must be approved in accordance with 49 U.S.C. 14504a(d)(7).

The Secretary also has broad rulemaking authority in 49 U.S.C. 13301(a) to carry out 49 U.S.C. 14504a, which is part of 49 U.S.C. subtitle IV, part B. Authority to administer these statutory provisions has been delegated to the FMCSA Administrator by 49 CFR 1.87(a)(2) and (7).

V. Statutory Requirements for the UCR Fees

A. Legislative History

The legislative history of 49 U.S.C. 14504a indicates that the purpose of the UCR Plan and Agreement is both to replace the Single State Registration System (SSRS) for registration of interstate motor carrier entities with the States and to ''ensure that States don't lose current revenues derived from SSRS'' (S. Rep. 109–120, at 2 (2005)). The statute provides for a 15-member board of directors for the UCR Plan to be appointed by the Secretary.

The UCR Plan and the participating States are authorized by 49 U.S.C. 14504a(f) to establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The current annual fees charged for registration year 2019 are set out in 49 CFR 367.50 and for registration years 2020 and thereafter in § 367.60. These fees were adopted by FMCSA in December 2018 after a rulemaking proceeding. See Fees for the Unified Carrier Registration Plan and Agreement, 83 FR 67124 (Dec. 28, 2018).

For carriers and freight forwarders, the fees vary according to the size of the vehicle fleets, as required by 49 U.S.C. 14504a(f). The fees collected are allocated to the States and the UCR Plan in accordance with 49 U.S.C. 14504a(h).

B. Fee Requirements

The statute specifies that the fees set by the Agency are to be based on the recommendation of the UCR Plan (49 U.S.C. 14504a(f)(1)(B)). In recommending the level of fees to be charged in any registration year, and in setting the fee level, both the UCR Plan and the Agency shall consider the following factors:

- Administrative costs associated with the UCR Plan and Agreement;
- Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the UCR Plan; and
- Provisions governing fees in 49 U.S.C. 14504a(f)(1).

(49 U.S.C. 14504a(d)(7)(A)). The fees may be adjusted within a reasonable range on an annual basis if the revenues derived from the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or exceed those revenues (49 U.S.C. 14504a(f)(1)(E)).

Overall, the fees charged under the UCR Agreement must produce the level of revenue established by statute. Section 14504a(g) establishes the revenue entitlements for States that choose to participate in the UCR Agreement. FMCSA's understanding of its responsibilities under 49 U.S.C. 14504a in setting fees for the UCR Plan and Agreement is guided by the primacy the statute places on the need both to set and to adjust the fees to ensure they ''provide the revenues to which the States are entitled'' (49 U.S.C. 14504a(f)(1)(E)(i)). The statute links the requirement that the fees be adjusted ''within a reasonable range'' to the provision of sufficient revenues to meet the entitlements of the participating States (49 U.S.C. 14504a(f)(1)(E)). See also 49 U.S.C. 14504a(d)(7)(A)(ii)).

Section 14504a(h)(4) gives additional support for this understanding. This provision explicitly requires FMCSA to reduce the fees charged in the registration year following any year in which the depository retains any funds in excess of the amount necessary to satisfy the revenue entitlements of the participating States and the UCR Plan's administrative costs.

VI. Background

On December 13, 2018, the board of directors voted unanimously to submit a recommendation to the Secretary to reduce the fees collected by the UCR Plan for registration years 2020 and thereafter. The recommendation was submitted to the Secretary on February 25, 2019.[1] The requested fee adjustments are required by 49 U.S.C. 14504a because, for registration year 2018, the total revenues collected are expected to exceed the total revenue entitlements of $107.78 million distributed to the 41 participating States plus the $5 million established for ''the administrative costs associated with the unified carrier registration plan and agreement'' (49 U.S.C. 14504a(d)(7)(A)(i)). The maximum revenue entitlements for each of the 41 participating States, established in accordance with 49 U.S.C. 14504a(g), are set out in a table attached to the February 25, 2019 recommendation.

As indicated in the analysis attached to the February 25, 2019 recommendation letter, as of the end of November 2017, the UCR Plan had already collected $7.30 million more than the statutory maximum of $112.78 million for registration year 2018. The UCR Plan estimates that by the end of 2019, total revenues will exceed the statutory maximum by $9.17 million, or approximately 8.13 percent. The excess revenues collected will be held in a depository maintained by the UCR Plan as required by 49 U.S.C. 14504a(h)(4).

The UCR Plan's recommendation estimated the minimum projection of revenue collections for December 2017 through December 2018 by summing the collections within each of the registration years 2013 through 2015[2] and then comparing across years to find the minimum total amount. This is the same methodology used to project collections and estimate fees in the previous fee adjustment rulemaking (83 FR 67124 (Dec. 28, 2018)).

Under 49 U.S.C. 14504a(d)(7), the costs incurred by the UCR Plan to administer the UCR Agreement are eligible for inclusion in the total revenue to be collected, in addition to the revenue allocations for the participating States. The total revenue for registration years 2010 to 2018, as approved in the 2010 final rule (75 FR 21993 (April 27, 2010)), has been $112,777,059.81, including $5,000,000 for administrative costs. The UCR Plan's latest recommendation includes a reduction in the amount of the administrative cost allowance to $3,225,000 for the 2020 and 2021 registration years. The reduction of

[1] The February 25, 2019 recommendation from the UCR Plan and all related tables are available in the docket.

[2] Collections for registration year 2016 are not available for use for this purpose because registration and fee collection for that year was not finalized at the time of the UCR Plan Recommendation.

$275,000 recommended by the UCR Plan was based on estimates of future administrative cost allowances needed to operate the UCR Plan and Agreement. No changes in the State revenue entitlements are recommended, and the entitlement figures for 2020 and 2021 for the 41 participating States are the same as those previously approved for the years 2010 through 2018. Therefore, for registration years 2020 and 2021, the UCR Plan recommends total revenue to be collected of $111,002,060 (rounded to the nearest dollar). FMCSA proposes to approve this recommendation for the total revenue to be collected by the UCR Plan, as shown in the following table.

STATE UCR REVENUE ENTITLEMENTS AND FINAL 2020 REVENUE TARGET

State	Total 2020 UCR revenue entitlements
Alabama	$2,939,964.00
Arkansas	1,817,360.00
California	2,131,710.00
Colorado	1,801,615.00
Connecticut	3,129,840.00
Georgia	2,660,060.00
Idaho	547,696.68
Illinois	3,516,993.00
Indiana	2,364,879.00
Iowa	474,742.00
Kansas	4,344,290.00
Kentucky	5,365,980.00
Louisiana	4,063,836.00
Maine	1,555,672.00
Massachusetts	2,282,887.00
Michigan	7,520,717.00
Minnesota	1,137,132.30
Missouri	2,342,000.00
Mississippi	4,322,100.00
Montana	1,049,063.00
Nebraska	741,974.00
New Hampshire	2,273,299.00
New Mexico	3,292,233.00
New York	4,414,538.00
North Carolina	372,007.00
North Dakota	2,010,434.00
Ohio	4,813,877.74
Oklahoma	2,457,796.00
Pennsylvania	4,945,527.00
Rhode Island	2,285,486.00
South Carolina	2,420,120.00
South Dakota	855,623.00
Tennessee	4,759,329.00
Texas	2,718,628.06
Utah	2,098,408.00
Virginia	4,852,865.00
Washington	2,467,971.00
West Virginia	1,431,727.03
Wisconsin	2,196,680.00
Sub-Total	106,777,059.81
Alaska	500,000.00
Delaware	500,000.00
Total State Revenue Entitlement	107,777,060.00
Administrative Expenses	3,225,000.00
Total Revenue Target	111,002,060.00

VII. Discussion of Proposed Rulemaking

FMCSA has reviewed the formal recommendation from the UCR Plan and proposes to approve it, including the reduction in the allowance for administrative costs necessary to continue administering the UCR Agreement and the UCR Plan. Overall, the UCR Plan and the Agency agree on the reduction of the current fees for 2019 and subsequent registration years, and that there would be no change in the State UCR revenue entitlements.

VIII. International Impacts

Motor carriers and other entities involved in interstate and foreign transportation in the United States that do not have a principal office in the United States, are nonetheless subject to the fees for the UCR Plan. They are required to designate a participating State as a base State and pay the appropriate fees to that State (49 U.S.C. 14504a(a)(2)(B)(ii) and (f)(4)).

IX. Section-by-Section Analysis

In this NPRM, FMCSA proposes that the provisions of 49 CFR 367.60 (which were adopted in the December 28, 2018 final rule) would be revised to establish new reduced fees applicable only to registration year 2020. A new 49 CFR 367.70 would establish the proposed fees for registration year 2021, which would remain in effect for subsequent registration years unless revised in the future.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA performed an analysis of the impacts of the proposed rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), as supplemented by E.O. 13563, Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011). Accordingly, OMB has not reviewed it under those Orders. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6 dated December 20, 2018).

The changes proposed by this rule would reduce the registration fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan and the participating States. While each motor carrier would realize a reduced burden, fees are considered by OMB Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

This rule would establish reductions in the annual registration fees for the UCR Plan and Agreement. The entities affected by this rule are the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Because the State UCR revenue entitlements would remain unchanged, the participating States would not be impacted by this rule. The primary impact of this rule would be a reduction in fees paid by individual motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The reduction of the current 2019 registration year fees (finalized on December 28, 2018) would range from approximately $2 to $1,629 per entity, depending on the number of vehicles owned or operated by the affected entities. The reduction in fees for subsequent registration years would range from approximately $4 to $4,119 per entity.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

This proposed rule is neither expected to be an E.O. 13771 regulatory action nor an E.O. 13771 deregulatory action because there would be no cost impacts resulting from the rule.[3]

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and

[3] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339–9341. February 3, 2017.

mandates that agencies strive to lessen any adverse effects on these businesses. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would directly affect the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Under the standards of the RFA, as amended by the SBREFA, the participating States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5) of the RFA, both because State government is not included among the various levels of government listed in section 601(5), and because, even if this were the case, no State or the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under section 601(5) of the RFA.

The Small Business Administration's size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule would have an impact on a significant number of small entities, FMCSA examined the 2012 Economic Census [4] data for two different industries; truck transportation (Subsector 484) and transit and ground transportation (Subsector 485). According to the 2012 Economic Census, approximately 99 percent of truck transportation firms, and approximately 97 percent of transit and ground transportation firms, had annual revenue less than the Small Business Administration's [5] revenue thresholds of $27.5 million and $15 million, respectively, to be defined as a small entity. Therefore, FMCSA has determined that this rule will impact a substantial number of small entities.

However, FMCSA has determined that this rule would not have a significant impact on the affected entities. The effect of this rule would be to reduce the annual registration fee motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies are currently required to pay. The reduction will range from approximately $2 to $1,629 per entity, in the first year, and from approximately $4 to $4,119 per entity in subsequent years, depending on the number of vehicles owned and/or operated by the affected entities. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Gerald Folsom, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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 $165 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any one year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

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

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

[4] U.S. Census Bureau, *2012 US Economic Census,* available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_48SSSZ4&prodType=table* (accessed Apr. 27, 2017).

[5] U.S. Small Business Administration. ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' Published February 26, 2016. Available at: *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

K. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The Agency will complete a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA will be submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under E.O. 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.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.h. The Categorical Exclusion (CE) in paragraph 6.h. covers regulations and actions taken pursuant to regulation implementing procedures to collect fees that will be charged for motor carrier registrations. The proposed requirements in this rule are covered by this CE and the NPRM does not have any effect on the quality of the environment. The CE determination is available in the docket.

Q. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This proposed rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

List of Subjects in 49 CFR Part 367

Insurance, Intergovernmental relations, Motor carriers, Surety bonds.

■ In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 367 to read as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

■ 1. The authority citation for part 367 continues to read as follows:

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.87.

■ 2. Revise § 367.60 to read as follows:

§ 367.60 Fees under the Unified Carrier Registration Plan and Agreement for Registration Year 2020.

TABLE 1 TO § 367.60—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2020

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$60	$60
B2	3–5	180	
B3	6–20	357	
B4	21–100	1,248	
B5	101–1,000	5,946	
B6	1,001 and above	58,060	

■ 3. Add § 367.70 to subpart B to read as follows:

§ 367.70 Fees under the Unified Carrier Registration Plan and Agreement for registration years beginning in 2021.

TABLE 1 TO § 367.70—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2021 AND EACH SUBSEQUENT REGISTRATION YEAR THEREAFTER

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$66	$66
B2	3–5	197	
B3	6–20	393	
B4	21–100	1,371	
B5	101–1,000	6,534	
B6	1,001 and above	63,809	

Issued under authority delegated in 49 CFR 1.87.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–18418 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2018–0036; FXES111309BFLC0]

RIN 1018–BC80

Endangered and Threatened Wildlife and Plants; Removing Trifolium stoloniferum (Running Buffalo Clover) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the *Trifolium stoloniferum* (running buffalo clover) from the Federal List of Endangered and Threatened Plants, due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to the species have been eliminated or reduced to the point that it no longer meets the definition of an endangered or a threatened species under the Endangered Species Act of 1973, as amended (Act). We are seeking information and comments from the public regarding this proposed rule. We are also seeking comments on the draft post-delisting monitoring plan for running buffalo clover.

DATES: We will accept comments received or postmarked on or before October 28, 2019. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 11, 2019.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2018–0036, 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, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2018–0036, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

Document availability: This proposed rule and draft post-delisting monitoring (PDM) plan referenced throughout this document, as well as supporting materials, are available on *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0036 and on the Service's Midwest Region website at *https://www.fws.gov/midwest/endangered/plants/rbcl/index.html.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Ohio Ecological Services Field Office, 4625 Morse Road, Suite 104, Columbus, OH 43230; telephone 614–416–8993.

FOR FURTHER INFORMATION CONTACT: Barbara Hosler, Ecological Services, Midwest Regional Office, 5600 American Blvd. West, Suite 900, Bloomington, MN 55437–1458, telephone 517–351–6326. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Reasons we should or should not ''delist'' running buffalo clover (that is, remove the species from the List of Endangered and Threatened Plants (List));

(2) New information concerning any threat (or lack thereof), including climate change, to running buffalo clover;

(3) New information on any efforts by the States or other entities to protect or otherwise conserve running buffalo clover;

(4) New information concerning the historical and current status, range, distribution, and population size of running buffalo clover, including the locations of any additional populations of this species;

(5) Current or planned activities within the geographic range of running buffalo clover that may adversely affect or benefit the species; and

(6) Information pertaining to the requirements for post-delisting monitoring of running buffalo clover.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ohio Ecological Services Field Office (see **ADDRESSES**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. We must receive your request, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date specified above in **DATES**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. The purpose of peer review is to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We will invite comment from the peer reviewers during this public comment period; these comments will be available along with other public comments in the docket for this proposed rule on *http://www.regulations.gov.*

Previous Federal Actions

We published a final rule listing Running buffalo clover as an endangered species under the Act on June 5, 1987 (52 FR 21478). The Running Buffalo Clover Recovery Plan (Service 1989) was approved on June 8, 1989, and revised in 2007 (72 FR 35253, June 27, 2007).

Running buffalo clover was included in a cursory 5-year review of all species listed before January 1, 1991 (56 FR 56882). The 5-year review did not result in a recommendation to change the species' listing status. We completed comprehensive 5-year reviews of the status of running buffalo clover in 2008, 2011, and 2017 (Service 2008, 2011, 2017). These reviews recommended reclassification from endangered to threatened status, based on achievement of the recovery criteria at that time.

Species Information

It is our intent to discuss only those topics directly related to the proposed delisting of running buffalo clover. For more information on the description, biology, ecology, and habitat of running buffalo clover, please refer to the final listing rule (52 FR 21478, June 5, 1987), the Running Buffalo Clover (*Trifolium stoloniferum*) Recovery Plan: First Revision (Service 2007, pp. 1–13), and the 5-year reviews for running buffalo clover, completed on November 19, 2008 (Service 2008, entire), May 6, 2013 (Service 2013, entire), and April 21, 2017 (Service 2017, entire). These documents will be available as supporting materials at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0036.

Taxonomy and Species Description

Running buffalo clover is a member of the Fabaceae (pea) family. This short-lived perennial forms long runners (stolons) from its base and produces erect flowering stems, 10–30 centimeters (cm) (4–12 inches (in)) tall. The flower heads are round and large, 9–12 millimeters (mm) (0.3–0.5 in). Flowers are white, tinged with purple.

Distribution

The known historical distribution of running buffalo clover includes Arkansas, Illinois, Indiana, Kansas, Kentucky, Missouri, Ohio, and West Virginia (Brooks 1983, pp. 346, 349). There were very few reports rangewide between 1910 and 1983. Prior to 1983, the most recent collection had been made in 1940, in Webster County, West Virginia (Brooks 1983, p. 349). The species was thought extinct until it was rediscovered in 1983, in West Virginia (Bartgis 1985, p. 426). At the time of listing in 1987, only one population was known to exist, but soon afterward, several additional populations were found in Indiana, Ohio, Kentucky, and West Virginia. Populations were rediscovered in the wild in Missouri in 1994 (Hickey 1994, p. 1). A single population was discovered in Pennsylvania in 2017 (Grund 2017).

Extant populations of running buffalo clover are known from 154 populations in three ecoregions, as described by Bailey (1998): Hot Continental, Hot Continental Mountainous, and Prairie. For recovery purposes, the populations are divided into three regions based on proximity to each other and overall habitat similarities. These regions are Appalachian (West Virginia, southeastern Ohio, and Pennsylvania), Bluegrass (southwestern Ohio, central Kentucky, and Indiana), and Ozark (Missouri). The majority of populations occur within the Appalachian and Bluegrass regions.

Habitat

Running buffalo clover typically occurs in mesic (moist) habitats with partial to filtered sunlight and a prolonged pattern of moderate, periodic disturbance, such as grazing, mowing, trampling, selective logging, or flood-scouring. Populations have been reported from a variety of habitats, including mesic woodlands, savannahs, floodplains, stream banks, sandbars (especially where old trails cross or parallel intermittent streams), grazed

woodlots, mowed paths (*e.g.,* in cemeteries, parks, and lawns), old logging roads, jeep trails, all-terrain vehicle trails, skid trails, mowed wildlife openings within mature forest, and steep ravines. Running buffalo clover is often found in regions with limestone or other calcareous bedrock underlying the site, although limestone soil is not a requisite determining factor for the locations of populations of this species.

Sites that have not been disturbed within the last 20 years are unlikely to support running buffalo clover (Burkhart 2013, p. 158) because the species relies on periodic disturbances to set back succession and/or open the tree canopy to create and maintain the partial to filtered sunlight it requires. These disturbances can be natural (for example, tree falls and flood scouring) or anthropogenic (such as grazing, mowing, trampling, or selective logging) in origin. Although disturbances to the canopy cover may cause a temporary decline in running buffalo clover, populations usually increase 2 years later (Madarish and Schuler 2002, p. 127) and reach their highest density 14 years after disturbance (Burkhart 2013, p. 159). However, a complete loss of forest canopy can also be detrimental to running buffalo clover by allowing in too much sunlight and altering the microclimate.

Biology

Substantial variability in the growth and development of running buffalo clover has been documented, but the plant structure usually includes rooted crowns (rosettes that are rooted into the ground) and stolons (above-ground creeping stems) that connect several rooted or unrooted crowns, which eventually separate to leave ''daughter'' plants. Because of this stoloniferous growth form, individual plants can be difficult to distinguish. The Running Buffalo Clover Recovery Plan defines an individual plant as a rooted crown (Service 2007, p. 1). Rooted crowns may occur alone or be connected to other rooted crowns by runners.

Flowers, which typically bloom between mid-May and June, are visited by a variety of bee species (*Apis* spp. and *Bombus* spp.) and are cross-pollinated under field conditions (Taylor *et al.* 1994, p. 1,099). Running buffalo clover is also self-compatible (capable of pollinating itself); however, it requires a pollinator to transfer the pollen from the anthers to the stigma (Franklin 1998, p. 29). Although it may set fewer seeds by self-pollination than by outcrossing, the selfed seed set may be adequate to maintain the species in the wild (Taylor *et al.* 1994, p. 1,097). Selfed seeds have been shown to germinate well and develop into vigorous plants (Franklin 1998, p. 39).

Seeds typically germinate during early spring (mid-March to early April) when temperatures are between 15 and 20 degrees Celsius (°C) (59–68 degrees Fahrenheit (°F)) during the day and 5 to 10 °C (41–50 °F) at night. Baskin (2004) suggested that spring temperature fluctuations appear to be a major dormancy breaker in natural populations of running buffalo clover.

Scarification may aid in seed germination and seed dispersal. Scarification of seeds by the digestive system of herbivores, historically believed to be bison, deer, elk, or small herbivores such as rabbits or groundhogs, was likely a major event in natural populations (Thurman 1988, p. 4; Cusick 1989, pp. 475–476). Although deer are viable vectors for running buffalo clover seeds, the survival and germination rates of ingested seeds are low (Ford *et al.* 2003, pp. 426–427). Dispersal and establishment of new populations of running buffalo clover by white-tailed deer herbivory may not be significant (Ford *et al.* 2003, pp. 426–427). It appears that scarification accelerates the germination process, whereas natural germination may occur over time if the right temperature fluctuations occur (Service 2007, p. 9).

Genetics

Genetic studies of running buffalo clover have shown relatively low levels of diversity and low levels of gene flow between populations, even between those separated by short distances (Hickey and Vincent 1992, p. 15). Crawford *et al.* (1998, entire) examined genetic variation within and among populations of running buffalo clover throughout its geographic range known at the time. They found slight geographic variation between the four areas examined (Kentucky, Missouri, Ohio-Indiana, and West Virginia) and concluded that much of the species' genetic diversity resides among populations, and small populations of running buffalo clover contribute as much to the total species' genetic diversity as large populations (Crawford *et al.* 1998, p. 88).

Conservation Measures

The running buffalo clover recovery plan includes management recommendations for the species (Service 2007, p. 51). The recommendations include considerations for mowing, invasive plant control, and forest management. For sites that are actively managed, the frequency of management intervention to create and maintain suitable habitat depends on the nature of the management action. Sites that are mowed may require mowing annually while selective logging happens on an 8- to 14-year interval. Selection of appropriate management techniques are dictated by the conditions at each running buffalo clover population. Management actions specifically for running buffalo clover are in place where the plant occurs on Federal lands in Kentucky and West Virginia, State lands in Kentucky, Missouri, Ohio, and West Virginia, and three privately-owned sites (Service 2017, pp. 21–24).

Recovery Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section [section 4 of the Act], that the species be removed from the list.'' However, revisions to the Federal List of Endangered and Threatened Plants (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate that an analysis of the five threat factors under section 4(a)(1) would result in a determination that a species is no longer an endangered or threatened species because of any of the five statutory factors. Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of enhancing conservation and minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species on, or to remove a species from, the Federal List of Endangered and Threatened Plants (50 CFR 17.12(h)) is

ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent to which existing criteria are appropriate for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The revised recovery plan for running buffalo clover (Service 2007, p. 24) states that the ultimate goal of the recovery program is to delist running buffalo clover, that is, to remove the species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12(h)). The plan provides three criteria for reclassifying running buffalo clover from endangered to threatened status (*i.e.,* to ''downlist'' the species) and three criteria for delisting running buffalo clover. All of the downlisting criteria have been met since 2008 (Service 2008, pp. 3–4; Service 2011, pp. 3–4; Service 2017, pp. 3–5). The following discussion provides an assessment of the delisting criteria as they relate to evaluating the status of this species.

Criterion 1 for Delisting

Criterion 1 states that 34 populations, in total, are distributed as follows: 2 A-ranked, 6 B-ranked, 6 C-ranked, and 20 D-ranked populations across at least two of the three regions in which running buffalo clover occurs (Appalachian, Bluegrass, and Ozark). The number of populations in each rank is based on what would be required to achieve a 95 percent probability of the persistence within the next 20 years; this number was doubled to ensure biological redundancy across the range of the species. Rankings refer to the element occurrence (E.O.) ranking categories.

E.O. rankings, which integrate population size and habitat integrity, are explained in detail in the recovery plan (Service 2007, pp. 2–3). In summary, A-ranked populations are those with 1,000 or more naturally occurring rooted crowns; B-ranked populations have between 100 and 999 naturally occurring rooted crowns; C-ranked populations have between 30 and 99 naturally occurring rooted crowns; and D-ranked populations have between 1 and 29 naturally occurring rooted crowns.

Populations are currently distributed as follows: 16 A-ranked, 35 B-ranked, 44 C-ranked, and 59 D-ranked, and they occur in all three regions across the range of the species. Thus, we conclude that this criterion has been substantially exceeded.

Criterion 2 for Delisting

Criterion 2 states that for each A-ranked and B-ranked population described in Criterion 1, population viability analysis (PVA) indicates 95 percent probability of persistence within the next 20 years, or for any population that does not meet the 95 percent persistence standard, the population meets the definition of viable. For delisting purposes, viability is defined as: Seed production is occurring; the population is stable or increasing, based on at least 10 years of censusing; and appropriate management techniques are in place.

Seven A-ranked and 13 B-ranked populations are considered viable, based on a PVA or 10 years of data. Thus, we conclude that this criterion has been exceeded.

Criterion 3 for Delisting

Delisting criterion 3 states that the land on which each of the 34 populations described in delisting criterion 1 occurs is owned by a government agency or private conservation organization that identifies maintenance of the species as one of the primary conservation objectives for the site, or the population is protected by a conservation agreement that commits the private landowner to habitat management for the species.

This criterion was intended to ensure that habitat-based threats for the species are addressed. Small populations (C- and D-ranked populations) were included because they contribute as much as large populations to the overall level of the species' genetic diversity, which is important for survival of the species as a whole.

Currently, 23 populations meet this criterion, as follows: 5 A-ranked, 7 B-ranked, 5 C-ranked, and 6 D-ranked. These include populations where land management prioritizes the needs of running buffalo clover, although written management plans are not in place. There are 6 more A- and B-ranked populations than required. Although these additional higher-ranked populations can count for lower-ranked populations, this criterion has still not been fully met. However, 60 additional populations occur on publicly-owned lands, such as national forests, State lands, and local parks, thereby minimizing threats from habitat loss and degradation. Thus, although this criterion is not met in the manner specifically identified in the recovery plan, we conclude that the intent of the criterion to ensure that sufficient populations were protected from threats into the future has been met.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of endangered or threatened. Determining whether a species is recovered requires consideration of whether the species is still an endangered species or threatened species because of any of the

five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened species, this analysis of threats is an evaluation of both the threats currently facing the species and those that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as an endangered species or a threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors individually or cumulatively are operative threats that act on the species to the point that the species meets the definition of an endangered species or threatened species under the Act. The following analysis examines all five factors currently affecting or that are likely to affect the running buffalo clover in the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The revised recovery plan for running buffalo clover (Service 2007, p. 14) identified the major threats to this species throughout its range as habitat destruction, habitat succession, and invasive plant competition. Land development and the consequential loss of habitat can also be a threat to running buffalo clover. Because the species relies on periodic disturbances to set back succession and/or open the tree canopy to create and maintain the partial to filtered sunlight it requires, activities that interfere with natural disturbance processes can negatively affect populations of running buffalo clover. Conversely, activities that periodically set back natural succession can benefit the species.

Current logging practices may benefit running buffalo clover. At the Fernow Experimental Forest in north-central West Virginia, running buffalo clover is most often associated with skid roads in uneven-aged silvicultural areas (Madarish and Schuler 2002, p. 121). A study examining running buffalo clover abundance before and after logging suggests that populations may initially decrease after disturbance, but then rebound to higher than pre-disturbance levels (Madarish and Schuler 2002, p. 127).

In some populations it appears that both overgrazing and no grazing at all are threats to running buffalo clover. In Kentucky, overgrazing poses threats to running buffalo clover, but removal of cattle from clover populations has resulted in overshading and competition from other vegetation (White *et al.* 1999, p. 10). Periodic grazing at the Bluegrass Army Depot has provided the moderate disturbance needed to maintain running buffalo clover (Fields and White 1996, p. 14).

Nonnative species, such as bluegrass (*Poa pratensis*) and white clover (*Trifolium repens*), compete with running buffalo clover for available resources (Jacobs and Bartgis 1987, p. 441). Other nonnative species that affect running buffalo clover include Japanese stiltgrass (*Microstegium vimineum*), garlic mustard (*Alliaria petiolata*), Japanese honeysuckle (*Lonicera japonica*), Amur honeysuckle (*Lonicera maackii*), and multiflora rose (*Rosa multiflora*). Threats by invasive competition can be mediated by treating the invasive plants by hand removal, herbicide application, and/or mowing. Although nonnative species are widespread across the range of running buffalo clover, not all running buffalo clover sites are affected by invasive species. For example, 13 of the 31 sites (42 percent) in Ohio have one or more nonnative species present at varying densities, and 4 of those sites are managed for invasive species control.

The habitat needs of running buffalo clover on Federal, State, and locally-owned lands are included in plans or agreements for those lands. The Monongahela National Forest Land and Resource Management Plan (U.S. Forest Service 2011, pp. II–27—II–28) and Wayne National Forest Revised Land and Resource Management Plan (U.S. Forest Service 2006, pp. 2–22, D–16) both include habitat management and protection measures for running buffalo clover. The Bluegrass Army Depot in Kentucky protects and manages running buffalo clover under an Endangered Species Management Plan (Floyd 2006, pp. 30–37), included as part of their Integrated Natural Resource Management Plan, and all running buffalo clover populations at the Army Depot are covered by these management actions (Littlefield 2017). A memorandum of understanding between the Ohio Historical Society, Ohio Division of Natural Areas and Preserves, and the U.S. Fish and Wildlife Service provides for running buffalo clover habitat protection and management. We expect that these plans would remain in place and habitat management will continue after delisting running buffalo clover.

In total, twenty-three populations are under some form of management that incorporates specific needs of running buffalo clover, and 60 additional populations occur on publicly-owned lands that prevent loss from development. Although the species benefits from active management, it does not appear to rely on management actions as demonstrated by the 46 populations that have been found over the last 10 years at unmanaged sites where natural processes are maintaining suitable habitat for running buffalo clover. For these reasons, threats from habitat destruction and modification have been reduced or are being adequately managed such that they are not affecting the species' viability.

Summary of Factor A

Habitat destruction, habitat succession, and invasive plant competition are the primary threats to running buffalo clover. However, these stressors have been reduced or are being adequately managed now and into the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

When the species was listed in 1987, overutilization for scientific or educational purposes was identified as a threat, given that only one population consisting of four individuals was known at the time (52 FR 21478; June 5, 1987). Today, with more than 150 populations known, collection for scientific or educational purposes is very limited and distributed among many populations and is no longer considered a threat (Service 2017, p. 17).

Running buffalo clover is listed as endangered or threatened under State laws in Missouri, Indiana, Ohio, and Kentucky. The laws in Ohio and Missouri prohibit commercial taking of listed plants. We are aware of only one unpermitted collection in 2015 when a

population in West Virginia appeared to have been dug up and the main plant group removed (Douglas 2015). The purpose of the collection is unknown. Despite this one event, running buffalo clover is not known to be used for any commercial or recreational purposes, and we have no information that commercial or recreational collection will occur in the future.

Summary of Factor B

Running buffalo clover is not known to be used for any commercial or recreational purpose, and collection for scientific or educational purposes is limited. Based on available information, we do not consider there to be threats now or in the foreseeable future related to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

At the time of listing in 1987, disease was predicted to threaten running buffalo clover (52 FR 21478; June 5, 1987). Jacobs and Bartgis (1987, p. 441) suggested that the decline of this species may have partially centered on a pathogen introduced from the exotic white clover; however, no specific disease has been identified over the intervening years (Service 2008, p. 10). A number of viral and fungal diseases, including cucumber mosaic virus and the comovirus, are reported to have attacked the species in greenhouses at the Missouri Botanical Garden (Sehgal and Payne 1995, p. 320), but no evidence has been gathered showing these viruses' impact on running buffalo clover decline in the wild (Service 2008, p. 10).

Parasitism by root-knot nematodes (*Meloidogyne* spp.) is common in clovers and often limits productivity in cultivated clovers used as forage crops (Quesenberry *et al.* 1997, p. 270). Investigations have been conducted on the effects of root-knot nematodes on native North American clovers, including running buffalo clover. After inoculation of the parasite, running buffalo clover displayed high resistance to three of the four nematode species analyzed, and only an intermediate response to the fourth species of nematode (Quesenberry *et al.* 1997, p. 270). Thus, the threat from this parasite is not considered significant.

Herbivory by a variety of species has been reported for running buffalo clover. In Missouri, running buffalo clover plants are repeatedly grazed by rabbits, rodents, and slugs (Pickering 1989, p. 3). Similar observations have been made in Kentucky (Davis 1987, p. 11). The Fayette County, West Virginia population was eaten to the ground by a ground hog (*Marmota monax*), but more than a dozen rooted crowns were observed at the population the following year. White-tailed deer can also consume large amounts of running buffalo clover (Miller *et al.* 1992, p. 68–69).

Summary of Factor C

Although disease has been observed in running buffalo clover in greenhouses, no diseases are known to affect entire populations of the species in the wild. Populations appear to be capable of withstanding herbivory during the growing season. In sum, while disease or predation has had an occasional negative impact, most of these impacts do not appear to affect entire populations, or the impacts do not persist for any extended period of time. Based on available information, we do not consider there to be threats now or in the foreseeable future related to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether the stressors identified within the other factors may be ameliorated or exacerbated by an existing regulatory mechanism. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threats analyses under the other four factors, or otherwise enhance conservation of the species. Our consideration of these mechanisms is described in detail within our analysis of each of the factors (see discussion under each of the other factors).

For currently listed species, we consider the adequacy of existing regulatory mechanisms to address threats to the species absent the protections of the Act. Therefore, we examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms will continue to help ensure that future threats will be reduced or minimized. In our discussion under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats.

Twenty-three populations are specifically managed to provide for the species' habitat needs, and an additional 60 populations occur on publicly-owned lands where regulatory mechanisms now exist. These regulatory mechanisms include the Monongahela National Forest Land and Resource Management Plan, the Wayne National Forest Revised Land and Resource Management, the Bluegrass Army Depot's Endangered Species Management Plan, and a memorandum of understanding with the Ohio Historical Society, Ohio Division of Natural Areas and Preserves, and the U.S. Fish and Wildlife Service (see discussion under Factor A). These plans and agreements also provide for education and outreach efforts and surveying and monitoring for running buffalo clover. We expect that these plans and agreements would remain in place after delisting running buffalo clover.

Of the 154 extant populations of running buffalo clover, 74 (49%) are located on private land, with the remainder located on Federal, State, or local park land. Most of the privately-owned populations are on lands without specific regulatory mechanisms. Although running buffalo clover benefits from habitat management efforts, it is not dependent on active management and persists on sites without any regulatory mechanism in place. Additionally, State protections in Ohio and Missouri prohibit commercial taking of listed plants although running buffalo clover is not known to be used for any commercial or recreational purposes (see discussion under Factor B).

Summary of Factor D

Regulatory mechanisms to provide for management and/or consideration of running buffalo clover are in place for 83 populations. Furthermore, the species has persisted on lands without specific regulatory mechanisms. Consequently, we find that existing regulatory mechanisms, as discussed above, will continue to address stressors to running buffalo clover absent protections under the Act.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Factor E requires the Service to consider any other factors that may be

affecting running buffalo clover. Under this factor, we discuss small population size, inadequate seed dispersal, poor seed quality, and climate change.

Small Population Size

Long-term monitoring data suggest that running buffalo clover populations often display widely fluctuating population size. The cause for changes in population size may be due to disturbance, weather patterns, management strategy, natural succession, or other unknown factors. The cyclic nature of running buffalo clover and the high probability of small populations disappearing one year and returning a subsequent year, may lead to difficulty in protecting small populations. Regardless, small populations have displayed high levels of genetic diversity (Crawford *et al.* 1998, p. 88) that is important for survival of the species as a whole. Small population size is not a threat in and of itself.

Inadequate Seed Dispersal

Cusick (1989, p. 477) suggested that the loss of large herbivores, such as bison and white-tailed deer, after European settlement resulted in no effective means of dispersal remaining for running buffalo clover. Deer have now returned to pre-settlement numbers, but dispersal and establishment of new populations of running buffalo clover by white-tailed deer may not be significant (Ford *et al.* 2003, p. 427). With 154 occurrences of running buffalo clover now known, inadequate seed dispersal does not appear to be having population-level effects.

Poor Seed Quality

Although researchers have speculated that inbreeding depression may have contributed to the decline of running buffalo clover (Hickey *et al.* 1991, p. 315; Taylor *et al.* 1994, p. 1,099), selfed seeds have been shown to germinate well and develop into vigorous plants (Franklin 1998, p. 39). However, temporal variations in seed quality have been reported. Seed quality may be correlated with rainfall; quality decreases in years with unusually high rainfall (Franklin 1998, p. 38). With 154 occurrences of running buffalo clover now known, the impacts of poor seed quality do not appear to affect entire populations, nor do these impacts persist for any extended period of time.

Climate Change

Our current analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The effects of climate change are expected to result in rising average temperatures throughout the range of running buffalo clover, along with more frequent heat waves and increased periods of drought (IPCC 2014, p. 10), which may affect growth of running buffalo clover. For example, a prolonged drought in Missouri in 2012 may have impacted a running buffalo clover population for the next 2 years as plants were not observed again until 2015 (McKenzie and Newbold 2015, p. 20).

High precipitation events are also expected to increase in number, volume of precipitation, and frequency in mid-latitude areas (IPCC 2014, p. 11). Several running buffalo clover populations are located within the vicinity of a stream. Infrequent high flow events create moderate disturbance, which may be beneficial for this species. But increasing the magnitude or frequency of high flow events may increase storm flows and intensify disturbance from flood events, which may create excessive disturbance and alter the habitat suitability for running buffalo clover.

According to IPCC, ''most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change on most landscapes'' (IPCC 2014, p. 13). Shifts in the range of running buffalo clover as an adaptation to climate changes is unlikely, due to the limited dispersal of seeds, restriction to specific habitat types, and the lack of connection between most populations.

The effects of climate change may also result in a longer growing season and shorter dormant season, which may change flowering periods. For example, blossoms of running buffalo clover have been turning brown at the beginning of June (Becus 2016); and in 2016 and 2017, running buffalo clover plants in Ohio began blooming in April, which is the earliest this species had been observed blooming (Becus 2017). For some plant species, a change in flowering period may create an asynchrony between prime bloom time and when specific pollinators are available, resulting in a reduction in pollination and subsequent seed set. However, because running buffalo clover can be pollinated by a diversity of bee species, significant asynchrony with pollinators is not expected to occur.

Summary of Factor E

With their high levels of genetic diversity, small populations are important for survival of the species as a whole. Although inadequate seed dispersal and poor seed quality have been concerns in the past, they do not appear to affect entire populations, nor do their impacts persist for any extended period of time. Climate change presents a largely unknown influence on the species, with potential for negative and beneficial impacts. Populations of running buffalo clover occur within various ecoregions within the species' range and are capable of recovering from stochastic events, such as droughts and heavy precipitation and high stream flows. Running buffalo clover is not dependent on particular species of pollinators and appears adaptable to potential changes to pollinator communities. This indicates that populations will persist in the face of climate change.

Synergistic Effects

Many of the stressors discussed in this analysis could work in concert with each other and result in a cumulative adverse effect to running buffalo clover, *e.g.,* one stressor may make the species more vulnerable to other threats. However, most of the potential stressors we identified either have not occurred to the extent originally anticipated at the time of listing (Factors B, C, and D) or are adequately managed as described in this proposal to delist the species (Factors A and D). In addition, for the reasons discussed in this proposed rule, we do not anticipate stressors to

increase on publicly-owned lands or lands that are managed for the species.

Synergistic interactions are possible between effects of climate change and effects of other threats, such as nonnative plant invasion. However, it is difficult to project how the effects of climate change will affect interaction or competition between species. Uncertainty about how different plant species will respond under a changing climate makes projecting possible synergistic effects of climate change on running buffalo clover too speculative. However, the increases documented in the number of populations since the species was listed do not indicate that cumulative effects of various activities and stressors are affecting the viability of the species at this time or into the future.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.''

The Act does not define the term ''foreseeable future.'' For this proposed rule, our forecast of future impacts is based on a review of the period of available data for each threat and, when possible, a projection of the situation at least for a similar time period into the future. Natural succession from open to dense canopy in forests within the range of running buffalo clover occurs over a 30- to 40-year time span, depending on the dominant species and aspect of the site. The 1989 running buffalo clover recovery plan (Service 1989, pp. 4–5) indicates that invasive species were present at an Indiana population and that garlic mustard was abundant in unmanaged areas at a Kentucky population. In addition, garlic mustard was identified as being present at multiple Ohio populations in 1989. Therefore, many of the significant invasive species have been present within the range of running buffalo clover for more than 25 years. Further, we can extrapolate trends from the past 30 years that running buffalo clover has been listed as endangered. Thus, a timeframe of 25–30 years is reasonable as the foreseeable future for running buffalo clover.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to running buffalo clover. The number of known running buffalo clover populations has increased from 1 at the time of listing to 154 currently. New populations continue to be found, and the known range has expanded most recently to include Pennsylvania. Although we are not relying on it for our analysis, we recognize that it is reasonable to conclude that there may be additional populations of which we are not yet aware.

The main threat at many sites is habitat destruction, habitat succession, and competition with nonnative, invasive species (Factor A). Management to benefit running buffalo clover has been implemented since the time of listing and has shown to be effective. Twenty-three populations are under some form of management that addresses the needs of running buffalo clover. Because most managed populations occur on publicly-owned lands, we expect management will continue in the foreseeable future. Delisting Criterion 3 from the recovery plan was intended to ensure that habitat-based threats for the species are addressed. Although this criterion has not been met as specified in the recovery plan, we believe that its intention has been met between the 23 sites managed specifically for the conservation of the species plus the 60 additional locations on Federal and State lands. Additionally, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations as we believed when the recovery criterion was drafted. The 23 populations currently under management in conjunction with the 60 other populations on publicly-owned lands are sufficient to maintain the species' viability now and into the foreseeable future.

During our analysis, we found that other factors believed to be threats at the time of listing—including overutilization for commercial, recreational, scientific, or educational purposes (Factor B), disease and predation (Factor C), and inbreeding depression and poor seed quality and dispersal (Factor E)—are no longer considered threats, and we do not expect any of these conditions to substantially change into the foreseeable future. Since listing, we have become aware of the potential for the effects of climate change (Factor E) to affect all biota, including running buffalo clover. While available information in the most recent 5-year review indicates that running buffalo clover may be responding to a change in temperatures or precipitation patterns, the lack of a declining trend in running buffalo clover populations suggests the effects of ongoing climate change are not a threat to the species within the foreseeable future.

Thus, after assessing the best scientific and commercial data available and having considered the individual and cumulative impact of threats on this species, we conclude that running buffalo clover is not in danger of extinction throughout all of its range, nor is it likely to become so within the foreseeable future.

Significant Portion of the Range Analysis

Having determined that running buffalo clover is not in danger of extinction, or likely to become so, throughout all of its range, we next consider whether there are any significant portions of its range in which running buffalo clover is in danger of extinction or likely to become so. Under the Act and our implementing regulations, a species may warrant listing if it is an endangered species or a threatened species. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' On July 1, 2014, we published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered species or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular

status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid distinct population segment (DPS), we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making the listing, delisting, and reclassification determinations. However, we acknowledge the recent adverse ruling by the United States District Court for the Northern District of California, which has vacated the ''significant portion'' part of the Services' SPR Policy (*Desert Survivors, et al.* v. *U.S. Department of the Interior, et al.,* No. 16–cv–01165–JCS (Northern District of California, Aug. 24, 2018)). The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species, and no SPR analysis will be required.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range; rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), then those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is in danger of extinction or likely to become so. We must go through a separate analysis to determine whether the species is in danger of extinction or likely to become so in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address either the significance question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.''

Running buffalo clover does not exhibit any substantial differences in morphology or other factors in any portions of its range. The identified threats have been reduced or are being adequately managed across the species' range, and no portions of the range retain elevated threat levels. There is no indication that any portion of the species' range is so important that its loss would cause the entire species to become endangered or threatened. For these reasons, we conclude that running buffalo clover is not in danger of extinction, or likely to become so within the foreseeable future, throughout a significant portion of its range.

Effects of This Rule

The Act sets forth a series of general prohibitions and exceptions that apply to all endangered plants. It is illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce running buffalo clover to possession from areas under Federal jurisdiction. Section 7 of the Act requires that Federal agencies consult with us to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the species' continued existence. If this proposed rule is made final, it would revise 50 CFR 17.12 to remove running buffalo clover from the Federal List of Endangered and Threatened Plants, and these prohibitions would no longer apply. Because critical habitat has not been designated for this taxon, this rule, if made final, would not affect 50 CFR 17.96.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) of the Act and, therefore, must remain actively engaged in all phases of post-delisting monitoring. The States within the species' range are providing information on proposed management guidelines as well as future monitoring protocols. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

Post-Delisting Monitoring Plan Overview

We have prepared a draft PDM plan for running buffalo clover. The draft plan discusses the current status of the taxon and describes the methods proposed for monitoring if the taxon is removed from the Federal List of Endangered and Threatened Plants. The draft plan: (1) Summarizes the status of running buffalo clover at the time of proposed delisting; (2) describes frequency and duration of monitoring; (3) discusses monitoring methods and potential sampling regimes; (4) defines what potential triggers will be evaluated for additional monitoring; (5) outlines reporting requirements and procedures;

and (6) proposes a schedule for implementing the PDM plan and defines responsibilities. It is our intent to work with our partners towards monitoring the recovered status of running buffalo clover. We seek public and peer reviewer comments on the draft PDM plan, including its objectives and procedures (see Information Requested, above), with publication of this proposed rule. The draft PDM plan is available at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0036. You can submit your comments on the draft PDM plan by one of the methods listed above under **ADDRESSES**.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We determined that we do not need to prepare environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We are not aware of running buffalo clover occurring on any tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0036, or upon request from the Ohio Ecological Services Field Office, 4625 Morse Road, Suite 104, Columbus, OH 43230; telephone 614–416–8993.

Authors

The primary authors of this proposed rule are the staff members of the Ohio Ecological Services Field Office and the Midwest Regional Office in Bloomington, Minnesota.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entry for ''*Trifolium stoloniferum*'' under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Dated: March 19, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–18413 Filed 8–26–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 84, No. 166

Tuesday, August 27, 2019

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.

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Rules of Practice and Procedure; Meeting of The Judicial Conference

AGENCY: Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a meeting on January 28, 2020. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: January 28, 2020.

Time: 9 a.m.–5 p.m.

ADDRESSES: Westin Hotel, 333 North Central Avenue, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

Authority: 28 U.S.C. 2073(c)(1).

Dated: August 22, 2019.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2019–18451 Filed 8–26–19; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Office of Partnerships and Public Engagement, USDA 1994 Tribal Scholars Program.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Office of Partnerships and Public Engagement intention to request an extension for a currently approved information collection for the United States Department of Agriculture (USDA) 1994 Tribal Scholars Program.

DATES: Comments on this notice must be received by 60 days after publication in the **Federal Register** to be assured of consideration.

ADDRESSES: Office of Partnerships and Public Engagement invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Lawrence A. Shorty, U.S. Department of Agriculture, Office of Partnerships and Public Engagement, 1400 Independence Avenue SW, Mailstop 0601, Room 520–A, Whitten Building, Washington, DC 20250–3700.
- *Hand or courier-delivered submittals:* 1400 Independence Avenue SW, Room 520–A, Whitten Building, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Office of Partnerships and Public Engagement. Comments received in response to this notice will be made available to the public for inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

For access to background documents or comments received, go to the Office of Partnerships and Public Engagement at 1400 Independence Avenue SW, Room 520–A, Whitten Building, Washington, DC 20250–3700, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Shorty, USDA 1994 Program Director, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; or call (202) 720–6350 or fax (202) 720–7704.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Office of Partnerships and Public Engagement to request an extension for a currently approved information collection for the USDA 1994 Tribal Scholars Program.

Title: USDA 1994 Tribal Scholars Program.

OMB Number: 0503–0016.

Expiration Date of Approval: Three years from approval date.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The USDA 1994 Tribal Scholars Program is a joint human capital initiative between the U.S. Department of Agriculture (USDA) and the 1994 Institutions. Through the 1994 National Program, USDA offers scholarships to high school and college students who are seeking a bachelor's degree in the fields of agriculture, food, science, or natural resource sciences and related disciplines at one of the 1994 Institutions. This program offers a combination of paid work experience with a USDA sponsoring agency. Students will fill Excepted Service positions, receive mentoring, and be provided developmental assignments. The program is conducted in accordance with a planned schedule and a working agreement between USDA agencies and the student.

The USDA 1994 Tribal Scholars Program will offer scholarships and paid internships to U.S. citizens for a period of up to 4 years. The eligibility standards are:

1. Must be at least 16 years old.
2. Must be able to complete required occupation-related work experience (640 hours) prior to or concurrently with the completion of course requirements for the degree.
3. Must be a United States citizen or national (resident of American Samoa or Swains Island).

If you are not a citizen, you may participate if you are legally admitted to

the United States as a permanent resident and are able to meet United States citizenship requirements prior to completion of your degree.

4. Must be in good academic standing.

High School College and College applicants will apply by:

(1) Writing an essay describing educational and career goals;

(2) Submitting a high school and/or a college transcript;

(3) Submitting a resume, and;

(4) Submitting two letters of recommendation. These letters of recommendation may be from high school teachers, college professors, and college officials.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.3 hours per response.

Respondents: High School or College Student applicants; High School Teachers and Guidance Counselors, College Professor(s), and College Officials.

Estimated Number of Respondents: 170 applications will generate 510 responses.

Estimated Number of Responses per Respondent: 3. Each application will generate three responses.

Estimated Total Annual Burden on Respondents: 663 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lawrence A. Shorty, USDA 1994 Tribal Scholars Program. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Signed on this 21st day of August, 2019.

Riley W. Pagett,

Chief of Staff, Office of Partnerships and Public Engagement.

[FR Doc. 2019–18361 Filed 8–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

National Forests and Grasslands in Texas; Oil and Gas Leasing Availability Analysis Environmental Impact Statement

AGENCY: Forest Service, USDA,

ACTION: Notice of intent to prepare an environmental impact statement

SUMMARY: The National Forests and Grasslands in Texas (NFGT) are initiating the preparation of an environmental impact statement (EIS). The EIS will analyze and disclose the effects of identifying areas as available or unavailable for new oil and gas leasing. The proposed action identifies the following elements: What lands will be made available for future oil and gas leasing; what stipulations will be applied to lands available for future oil and gas leasing, and if there would be any plan amendments to the 1996 NFGT Revised Land and Resource Management Plan (Forest Plan).

DATES: Public comments concerning the scope of the analysis must be received by October 11, 2019. The draft EIS is expected in the winter of 2019, and the final EIS is expected in the fall of 2020.

ADDRESSES: Send written comments to Oil and Gas EIS Project, National Forests and Grasslands in Texas, 2221 N. Raguet Street, Lufkin, Texas 75904. Comments may also be submitted electronically through the project website: *http://www.fs.usda.gov/goto/texas/oil-and-gas* or via fax to (936) 639–8588.

FOR FURTHER INFORMATION CONTACT: Robert Potts, Natural Resources and Planning Staff Officer, at (936) 639–8539.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Forest Service withdrew its consent to lease NFGT lands from the Bureau of Land Management (BLM) for oil and gas development in 2016. The reason for the withdrawal of consent was due to stakeholder concerns, including insufficient public notification, insufficient opportunity for public involvement, and insufficient environmental analysis. Environmental impacts of oil and gas leasing were last evaluated in the 1996 Final EIS for the NFGT Forest Plan. That document did not include an analysis of current issues, such as current impacts on air pollution, or of technologies, such as horizontal drilling and hydraulic fracturing.

There is a need to analyze the impacts of new oil and gas development technologies on surface and subsurface water and geologic resources; air resources; fish and wildlife resources; fragile and rare ecosystems; threatened and endangered species; and invasive plant management. There is the need to examine changed conditions since the Forest Plan was published, such as increases in dispersed and developed recreation, wild and scenic river eligibility and suitability, and changed socioeconomic conditions. Tribes will also need to be consulted to identify needed protections for heritage resource areas.

These current issues and changed conditions need to be evaluated in determining which National Forest System (NFS) lands administered by the NFGT should be made available for future oil and gas leasing. Such an evaluation also is necessary to determine what lease stipulations should apply to those lands to protect resources.

The Forest Service will prepare an EIS to support the BLM's independent decision to include the NFGT administered NFS lands that are made available for leasing in future competitive oil and gas lease sales.

Proposed Action

The Forest Service proposes to identify NFGT administered lands that would be administratively available for future oil and gas leasing; to identify which stipulations would be applied to protect resources on lands available for future oil and gas leasing; and to determine if the 1996 NFGT Forest Plan should be amended. The Forest Service's analysis will not affect current valid leasing, including the associated terms, conditions, and stipulations. The EIS also would not affect the exercising of reserved and outstanding mineral rights on NFS lands. The proposed changes would apply only to new leases for federal minerals that may be issued.

Following an initial evaluation of the need to change current direction, the following actions are being proposed to address those areas and management

directions that need to be changed. Management direction and the acres provided below would apply to the decision area. The decision area includes only those NFGT lands where the Forest Service manages the surface and the underlying mineral estate is federally managed by the BLM. The total decision area is approximately 447,000 acres.

- Both current management and the proposed action would maintain 38,300 acres as closed for congressionally-designated wilderness areas.
- The proposed action would convert Controlled Surface Use (CSU) stipulations to No Surface Occupancy (NSO) stipulations for natural heritage botanical areas and reservoirs on the NFGT. This would decrease the number of acres with a CSU stipulation from approximately 73,100 to 63,100 acres.
- The proposed action would remove the current turkey nesting Timing Limitation (TL) stipulation.
- The proposed action would add NSO stipulations to protect natural heritage botanical areas, special status species, unique prairie vegetation communities, inclusional wetlands, sensitive aquatic areas, natural springs, and steep slopes. This would increase the numbers of acres with a NSO stipulation from approximately 11,100 to 28,000 acres.
- Several NSO and CSU stipulations would require site-specific surveys to identify areas where the stipulation applies. This includes red-cockaded woodpecker (RCW) NSO and CSU stipulations for cavity trees, cluster sites, and foraging habitat. These RCW stipulations would apply in Management Area 2, which includes approximately 226,700 acres of the decision area. Site-specific surveys are also required to determine CSU areas for the protection of 100-year floodplains and intermittent and perennial waterways.
- Existing NSO and CSU stipulations related to erodible soils, flood control structures, Research Natural Areas, developed recreation sites, scenic areas and Lake Conroe would be updated to improve implementability.
- New stipulations to address invasive plants, restoration seed mixes, and soil stability associated with well pad construction would also be added.

The NFGT website at *http://www.fs.usda.gov/goto/texas/oil-and-gas* includes a listing of the proposed stipulation changes, a map of the existing stipulations and where they are applied, and a map of the proposed action stipulations and where they would be applied.

Proposed Amendment to the NFGT Forest Plan

The proposed action would also amend the existing NFGT Forest Plan. The 36 CFR 219 regulations pertaining to NFS land management planning (the planning rule) require that the responsible official provide notice ''about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment'' (36 CFR 219.13(b)(2)). Whether a rule provision is directly related to an amendment is determined by any one of the following: the purpose for the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a lessening of plan protections by the amendment (36 CFR 219.13(b)(5)).

Under the proposed action, the Forest Plan would be amended to include the following restrictions on the lands available for leasing:

- NSO for the limestone areas on the Lyndon B. Johnson (LBJ) National Grassland (NG), the blackland praries on the Sam Houston NF and Caddo NG, habitat areas for the Louisiana Pine Snake, RCW cluster sites, slopes greater than 15 percent, inclusional wetlands, sensitive aquatic areas, and natural springs.
- CSU for the RCW breeding season.

The following 36 CFR 219 requirements will likely be ''directly related'' to this LRMP amendment:

- 36 CFR 219.8(a)(2)(ii)—The plan must include plan components to maintain or restore: ''Soils and soil productivity, including guidance to reduce soil erosion and sedimentation.''
- 36 CFR 219.8(a)(2)(iv)—The plan must include plan components to maintain or restore: ''Water resources in the plan area, including lakes, streams, and wetlands.''
- 36 CFR 219.9(a)(2)(ii)—The plan must include plan components to maintain or restore: ''Rare aquatic and terrestrial plant and animal communities.''
- 36 CFR 219.9(b)(1)—The responsible official shall ''provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species.''
- 36 CFR 219.10(a)(2)—When developing plan components for integrated resource management the responsible official shall consider: ''Renewable and nonrenewable energy and mineral resources.''

Preliminary Issues

A preliminary list of issues that will be reviewed during this analysis is as follows:

- Impacts on areas of the forest where air pollution levels have not met the National Ambient Air Quality Standards for criteria air pollutants and have been designated as nonattainment areas.
- Impacts on surface and subsurface water quantity and quality, including public water supplies.
- Impacts from well pad and steep slope erosion and seditment transport into streams, wetlands, or other sensitive aquatic areas.
- Impacts from noxious and invasive weed spread.
- Impacts on rare plants and ecosystems.
- Fragmentation, removal, or disturbances on wildlife corridors, critical wildlife habitats, and other important or sensitive wildlife habitats.
- Impacts on threatened and endangered species, such as the RCW and Louisiana pine snake.
- Impacts on prescribed rangeland conservation burning and reforestation management.
- Traffic, noise, light pollution, and visual impacts on nearby residents, visitors, and other forest users.
- Impacts on royalty payments to counties associated with any changes in oil and gas leasing.
- Impacts on special designations and impacts on wilderness character.
- Impacts on recreationists and loss of recreation opportunities.
- Impacts on geologic features on the NFGT, including salt domes, and potential for induced seismicity.

Additional issues may be identified based on comments received during this public scoping period.

Preliminary Alternatives

In the EIS, the Forest Service will analyze the No Action Alternative (the existing oil and gas leasing alternative), the Proposed Action Alternative, and a No Leasing Alternative. Some possible additional alternatives would be ones that add NSO stipulations to: all streamside management zones, the Longleaf Pine Special Area, streams eligible for Wild and Scenic River designation, bottomland areas, all lands within RCW Habitat Management Areas, and habitat areas associated with the Neches River rose mallow. Other alternatives may also be developed and considered, in order to address issues raised during the scoping process.

Nature of Decision To Be Made

Based on the analysis and information contained in the EIS, the Forest Supervisor will decide which areas will be open to development, subject to standard oil and gas leasing terms and conditions; and which areas will be

open to development, subject to NSO, CSU, or TL stipulations. The Forest Supervisor also will decide under what conditions the Forest Service will authorize the BLM to modify, waive, or grant an exception to a stipulation. In accordance with leasing analysis requirements in 36 CFR 228.102, the Forest Supervisor will consider alternatives to the proposal, including that of not allowing leasing. Whether or not to lease specific lands is not part of this decision.

Decision Will Be Subject to Objection

Before a decision is made, oil and gas leasing availability will be subject to the pre-decisional administrative review process (the objection process) outlined in 36 CFR 218; however, the decision to amend the Forest Plan for the NFGT will be subject to the objection process identified in 36 CFR 219 Subpart B. These two pre-decisional objection processes will run concurrently.

Under both the 36 CFR 218 and 219 administrative review processes, only those individuals and entities who have previously submitted substantive formal comments on the proposed project or the plan amendment may file an objection. Comments can be submitted by the public during scoping or any other designated opportunities for comment.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the EIS by helping to define its scope. The Forest Service requests input on the proposed action, the proposed amendment to the Forest Plan, the content of the EIS, the issues and impacts to be addressed in the EIS, and the alternatives that it should consider. During scoping, commenters should clearly describe specific issues or topics that the EIS should address. This will assist the Forest Service in identifying significant environmental, social, and economic issues related to oil and gas leasing on NFS lands administered by the NFGT. The public may also provide comments on any other 36 CFR 219 substantive requirements that are likely to be ''directly related'' to the proposed plan amendment (refer to 36 CFR 219.13(b)(2)).

Four public meetings are planned. The meeting addresses, dates, and times will be provided on the project website, *http://www.fs.usda.gov/goto/texas/oil-and-gas.*

It is important that reviewers provide their comments before the Forest Service begins preparing the EIS; therefore, comments should be provided before the scoping period closes, and commenters should clearly articulate their concerns about the alternatives and potential impacts. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with eligiblity to participate in subsequent administrative review or judicial review.

Lead and Cooperating Agencies

The Forest Service, NFGT, is the lead agency and the BLM, New Mexico State Office, is a cooperating agency in this analysis.

Responsible Official

The responsible official is William E. Taylor, Jr., Forest Supervisor, National Forests and Grasslands in Texas, 2221 N. Raguet Street, Lufkin, Texas 75904.

Dated: July 25, 2019.

Frank R. Beum,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–18357 Filed 8–26–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR) June 8, 2016 through November 30, 2017.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Manuel Rey or Whitley Herndon, 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) 482–5518 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers nine producers and exporters of the subject merchandise. Commerce selected two companies, Ajmal Steel Tubes & Pipes Ind. L.L.C. (Ajmal)/Noble Steel Industries L.L.C. (Noble Steel) (collectively, Ajmal Steel) [1] and Universal Tube and Plastic Industries, Ltd. (UTP)/THL Tube and Pipe Industries LLC (TTP)/KHK Scaffolding and Formwork LLC (collectively, Universal).[2] The producers and or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On February 21, 2019, Commerce published the *Preliminary Results.*[3] In March 2019, Ajmal Steel and Universal submitted case briefs.

On May 8, 2019, we issued a post-preliminary determination related to an alleged particular market situation in this administrative review.[4] In May 2019, the petitioners [5] submitted a case brief related to the post-preliminary determination,[6] and Ajmal Steel and Universal submitted rebuttal briefs on this topic.[7] On May 23, 2019, we

[1] On December 11, 2018, we preliminarily collapsed Ajmal and Noble Steel. *See* Memorandum, ''Whether to Collapse Ajmal Steel Tubes and Pipes Ind. L.L.C. and Noble Steel Industries L.L.C. in the 2016–2017 Antidumping Duty Administrative Review of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates,'' dated December 11, 2018. Because no party commented on this decision, we continue to find it appropriate to collapse Ajmal and Noble for purposes of the final results.

[2] On January 31, 2019, we preliminarily found that TTP is the successor-in-interest to UTP. *See* Memorandum, ''Successor-In-Interest Determination in the 2016–2017 Antidumping Duty Administrative Review on Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates,'' dated January 31, 2019. Because no party commented on this decision, we continue to find TTP to be the successor-in-interest to UTP.

[3] *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 5417 (February 21, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[4] *See* Memorandum, ''Antidumping Administrative Review of Circular Welded Pipe from the United Arab Emirates: Post-Preliminary Determination Regarding Particular Market Situation Allegation,'' dated May 8, 2019.

[5] The petitioners are Bull Moose Tube Company and Wheatland Tube Company.

[6] *See* Petitioners' Case Brief, ''Circular Welded Carbon-Quality Steel Pipe from The United Arab Emirates: Petitioners' Brief Regarding the Particular Market Situation,'' dated May 16, 2019.

[7] *See* Universal's Letter, ''Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates—Rebuttal Brief Regarding Petitioners' Particular Market Situation Allegation,'' dated May 21, 2019; and Ajmal Steel's Letter, ''Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates; Post-Preliminary Determination on

Continued

postponed the final results by 60 days, until August 20, 2019.[8]

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

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 (*e.g.,* black, galvanized or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.,* American Society for Testing and Materials International (ASTM), proprietary, or other), generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). The products subject to this 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 numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum.[9] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is also available to all interested parties in the Central Records Unit, room B8024, of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin calculations for Ajmal Steel and those companies not selected for individual review.[10]

Final Results of the Review

We have determined that the following weighted-average dumping margins exist for the following firms during the period June 8, 2016 through November 30, 2017:

Exporter/producer	Weighted-average dumping margin (percent)
Ajmal Steel Tubes & Pipes Ind. L.L.C. (Ajmal)/Noble Steel Industries L.L.C	2.83
Universal Tube and Plastic Industries, Ltd. (UTP)/THL Tube and Pipe Industries LLC (TTP)/KHK Scaffolding and Formwork LLC	1.65

We have determined that the review-specific average rate is applicable to the following companies:[11]

Exporter/producer	Weighted-average dumping margin (percent)
Abu Dhabi Metal Pipes and Profiles Industries Complex	2.24
Ferrolab LLC	2.24
Global Steel Industries	2.24
Lamprell	2.24
Link Middle East Ltd	2.24
PSL FZE	2.24
Three Star Metal Ind LLC	2.24

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), because Ajmal Steel and Universal reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate based on the average[12] of the cash deposit rates calculated for Ajmal Steel and Universal. 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.[13]

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

Particular Market Situation: Rebuttal Brief,'' dated May 21, 2019.

[8] *See* Memorandum, ''Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: 2016–2017 Administrative Review: Extension of Deadline for Final Results,'' dated May 23, 2019.

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipes and Tubes from the United Arab Emirates,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[10] *See* Issues and Decision Memorandum.

[11] This rate is based on the simple average of the margins calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[12] This rate was calculated as discussed in footnote 10.

[13] *See* section 751(a)(2)(C) of the Act.

unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results 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 each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently-completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, or a previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.95 percent, the all-others rate established in the less than fair value investigation.[15] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Margin Calculations
IV. Discussion of the Issues
  1: Existence of a Particular Market Situation (PMS)
  2: Billing Adjustments
  3: Cost Database
  4: Quantity Discounts in the Home Market
  5: Level of Trade (LOT) for Universal's Affiliated Resellers
V. Recommendation

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[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *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).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is partially rescinding its administrative review of the antidumping duty (AD) order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China) for the period of review (POR) April 1, 2018 through March 31, 2019.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Rebecca Janz, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2972.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2019, Commerce published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the AD order on drawn sinks from China for the POR.[1]

On April 30, 2019, Commerce received timely requests from Elkay Manufacturing Company and KaiPing Dawn Plumbing Products, Inc. to conduct an administrative review of the AD order on drawn sinks from China.[2]

On June 13, 2019, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of initiation of an administrative review of the AD order.[3] The administrative review was initiated with respect to 29 companies, and covers the period April 1, 2018 through March 31, 2019. Subsequent to the initiation of the administrative review, the petitioner in this proceeding, Elkay Manufacturing Company, timely withdrew its review requests for 18 of these companies, as discussed below.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of notice of initiation of the requested review. The petitioner withdrew its request for an administrative review of the following companies within 90 days of the date of publication of the *Initiation Notice:*[4] Foshan Shunde MingHao Kitchen Utensils Co., Ltd.; Foshan Zhaoshun

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 12207 (April 1, 2019).

[2] *See* Letter from the Petitioner, ''Re: Drawn Stainless Steel Sinks from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2019. *See also* Letter from KaiPing Dawn Plumbing Products, Inc., ''RE: Drawn Stainless Steel Sinks from the People's Republic of China: Request for Antidumping Administrative Review,'' dated April 30, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 27587 (June 13, 2019) (*Initiation Notice*).

[4] *See* Letter from the Petitioner, ''Re: Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Partial Withdrawal of Request for Administrative Review,'' dated August 12, 2019.

Trade Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Guandong Dongyuan Kitchenware Industrial Co., Ltd.; Guandong Yingao Kitchen Utensils Co., Ltd.; Hangzhou Heng's Industries Co., Ltd.; Hubei Foshan Success Imp & Exp Co. Ltd.; J&C Industries Enterprise Limited; Jiangmen Hongmao Trading Co., Ltd.; Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.; Ningbo Oulin Kitchen Utensils Co., Ltd.; Primy Cooperation Limited; Shenzhen Kehuaxing Industrial Ltd.; Shunde Foodstuffs Import & Export Company Limited of Guangdong; Shunde Native Produce Import and Export Co., Ltd. of Guangdong; Zhongshan Newecan Enterprise Development Corporation; and Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong. Accordingly, Commerce is rescinding this review, in part, with respect to these companies, in accordance with 19 CFR 353.213(d)(1).[5]

The instant review will continue with respect to the following companies: B&R Industries Limited; Feidong Import and Export Co., Ltd.; Guangdong G-Top Import and Export Co., Ltd.; Guangdong New Shichu Import & Export Company Limited; Jiangmen New Star Hi-Tech Enterprise Ltd.; Jiangmen Pioneer Import & Export Co., Ltd.; KaiPing Dawn Plumbing Products, Inc.; Ningbo Afa Kitchen and Bath Co., Ltd.; Xinhe Stainless Steel Products Co., Ltd.; Zhongshan Superte Kitchenware Co., Ltd.; and Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates 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). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: August 21, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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[5] Commerce no longer considers the non-market economy entity as an exporter conditionally subject to administrative reviews. *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 3, 2013).

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 27, 2019.

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made between July 1, 2018, and September 30, 2018, inclusive. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on July 29, 2019.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance between July 1, 2018, and September 30, 2018, inclusive.

Scope Rulings Made Between July 1, 2018 and September 30, 2018

Canada

A–122–857 and C–122–858: Certain Softwood Lumber Products From Canada

Requestor: Tumac Lumber Co., Inc. (Tumac); railroad ties imported by Tumac are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders because the physical description of the product is expressly covered by the language of the scope; July 26, 2018.

A–122–857 and C–122–858: Certain Softwood Lumber Products From Canada

Requestor: Shake and Shingle Alliance (SSA); SSA's cedar shakes and shingles are within the scope of the AD and CVD orders based on the language of the scope and the additional factors enumerated in 19 CFR 351.225(k)(1); September 10, 2018.

Japan

A–588–851 and A–485–505: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4.5 Inches) From Japan and Romania

Requestor: TMK IPSCO; the four Romanian-origin steel coupling stock products with specific combinations of outer dimeter and wall thickness were determined to be covered by the scope of the orders based on the unambiguous, plain language of the scope, *i.e.,* they are made to the API 5L specification and are within the physical parameters described in the scope; July 18, 2018.

A–583–831; A–580–834; A–588–845; C–580–835: Stainless Steel Sheet and Strip in Coils From Japan, the Republic of Korea and Taiwan

Requestor: Sumitomo, Inc.; based on the plain language of the scope of the orders Sumitomo's suspension foil is outside the scope of the orders; August 17, 2018.

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 84 FR 36577 (July 29, 2019).

People's Republic of China

A–570–814: Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China

Requestor: Vandewater International Inc.; threaded or grooved CEREICO brand steel branch outlets are within the scope of the AD order; September 10, 2018.

A–570–051 and C–570–052: Certain Hardwood Plywood Products From the People's Republic of China

Requestors: Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc.; the following merchandise is within the scope of the AD and CVD orders on certain hardwood plywood products from the People's Republic of China because they are covered by the plain language of the scope of the orders: (1) Hardwood plywood that has been cut-to-size, painted, laminated, stained, ultra violet light finished, grooved, and/or covered in paper, regardless of where such processing took place; (2) hardwood plywood that has been edge-banded; and (3) shipments of hardwood plywood that do not qualify for the ready-to-assemble kitchen cabinet exclusion; September 7, 2018.

A–570–881: Certain Malleable Cast Iron Pipe Fittings From the People's Republic of China

Requestor: Atkore Steel Components, Inc. (Atkore); the following electrical conduit fittings are outside the scope of the AD order: (1) Electrical conduit bodies range in size from 4 inches to ½ inch in diameter, meeting Underwriters Laboratories (UL) safety standards 514A, and including electrical box-fill information; (2) cast iron electrical conduit nipples (*i.e.,* pieces which extend a run of conduit or connect/attach similar conduit articles) meeting UL 514B Safety Standards (generally stamped with a UL Mark); (3) Cast iron electrical conduit couples and connectors (*i.e.,* pieces of electrical conduit that join two other pieces of electrical conduit together) meeting UL 514B Safety Standards (generally stamped with a UL Mark). Commerce found that, in contrast to malleable cast iron pipe fittings, Atkore's electrical conduit fittings were not designed to withstand pressure, are not intended for use with liquids, and are produced to a different industry standard; August 13, 2018.

A–570–891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Makita U.S.A., Inc; the Trolley for MAKPAC, Model #TR00000002, is outside the scope of the AD order because it lacks a ''projecting edge'' or ''toe plate'' that is capable of sliding under a load for purposes of lifting and/or moving the load; July 17, 2018.

A–570–875: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China

Requestor: Tyco Fire Products, LP (TFP); TFP's grooved ductile fittings identified by the product names 730ERS, 750, and 510DE are outside the scope of the AD order because they meet the exclusion language of the scope for grooved fittings or grooved couplings, and TFP's threaded ductile fittings identified by the product names 730ES and 40–5 are within the scope of the order because the subject fittings do not meet the scope exclusion for ductile fittings with push on ends; July 26, 2018.

A–570–016 and C–570–017: Passenger Vehicle and Light Truck Tires From the People's Republic of China

Requestor: Giti Tire (USA) Ltd. (GITI); certain radial spare tires, marketed exclusively for temporary/emergency use, listed in Table PCT–1B of the 2014 *Tire and Rim Association Year Book* that was in effect at the time the AD and CVD orders were issued and listed in Table PCT–1R of the 2017 *Tire and Rim Association Year Book* are not covered by the scope of the orders; July 11, 2018.

Anti-Circumvention Determinations Made Between July 1, 2018 and September 30, 2018

The People's Republic of China

A–570–029 and C–570–030: Certain Cold-Rolled Steel Flat Products From the People's Republic of China

Requestors: Steel Dynamics, Inc. (SDI), California Steel Industries (CSI), ArcelorMittal USA LLC (AMUSA), Nucor Corporation (Nucor), United States Steel Corporation, and AK Steel Corporation. Commerce determines that cold-rolled steel produced in Vietnam from hot-rolled steel substrate manufactured in China is circumventing the AD and CVD orders on cold-rolled steel from China. Commerce determines that the cold-rolled steel produced in Vietnam from hot-rolled steel substrate manufactured in China falls within the orders covering cold-rolled steel from China; August 17, 2018.

Interested parties are invited to comment on the completeness of this list of completed scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 1401 Constitution Avenue NW, APO/Dockets Unit, Room 18022, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: August 19, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–18369 Filed 8–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836, A–489–815, A–570–914, A–580–859]

Light-Walled Rectangular Pipe and Tube From the Republic of Korea, Mexico, Turkey, and the People's Republic of China: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on light-walled rectangular pipe and tube (light-walled pipe and tube) from the Republic of Korea (Korea), Mexico, Turkey, and 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 Reviews'' section of this notice.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Edythe Artman, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3931.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce published the notice of initiation of the second sunset reviews of the AD orders on light-walled pipe and tube from Korea, Mexico, Turkey, and China, pursuant to section 751(c)(2) of the Tariff Act of

1930, as amended (the Act).[1] We received notices of intent to participate in the reviews from the follow companies: Atlas Tube, Bull Moose Tube Company, California Steel and Tube, Hannibal Industries, Maruichi American Corporation, Searing Industries, Inc., Vest, Inc., Independence Tube Corporation, Southland Tube, Inc., and Wheatland Tube Company (collectively, the domestic interested parties).[2] Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We received no substantive responses from any other interested parties, nor was a hearing requested. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce has conducted expedited (120-day) sunset reviews of the orders.[4]

Scope of the Orders

The merchandise subject to the orders is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to these orders is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the orders were revoked, are addressed in the accompanying Issues and Decision Memorandum.[5] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the AD orders on light-walled pipe and tube from Korea, Mexico, Turkey, and China 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 dumping margins up to 30.66 percent, 11.50 percent, 41.71 percent, and 255.07 percent, respectively.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: August 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
VII. Final Results of Reviews
VIII. Recommendation

[FR Doc. 2019–18373 Filed 8–26–19; 8:45 am]

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[1] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 18477 (May 1, 2019).

[2] *See* Letter, ''Notice of Intent to Participate in Second Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Korea,'' dated May 13, 2019; Letter, ''Notice of Intent to Participate in Second Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico,'' dated May 13, 2019; Letter, ''Notice of Intent to Participate in Second Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Turkey,'' dated May 13, 2019; Letter, ''Notice of Intent to Participate in Second Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from China,'' dated May 13, 2019; Letter, ''Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Intent to Participate,'' dated May 16, 2019; Letter, ''Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Intent to Participate,'' dated May 16, 2019; Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Intent to Participate,'' dated May 16, 2019; Letter, ''Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Intent to Participate,'' dated May 16, 2019; and Letter, ''Second Five-Year Reviews of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey: Errata,'' dated July 15, 2019.

[3] *See* Letter, ''Light-Walled Rectangular Pipe and Tube from Korea, Second Review: Substantive Response to Notice of Initiation,'' dated May 31, 2019; Letter, ''Light-Walled Rectangular Pipe and Tube from Mexico: Substantive Response to Notice of Initiation,'' dated May 31, 2019; Letter, ''Light-Walled Rectangular Pipe and Tube from Turkey: Substantive Response to Notice of Initiation,'' dated May 31, 2019; and Letter, ''Light-Walled Rectangular Pipe and Tube from the People's Republic of China, Second Review: Substantive Response to Notice of Initiation,'' dated May 31, 2019.

[4] *See* Letter, ''Sunset Reviews Initiated on May 1, 2019,'' dated July 2, 2019.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Second Sunset Reviews of the Antidumping Duty Orders on Light-Walled Rectangular Pipe and Tube from the Republic of Korea, Mexico, Turkey and the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

[A–533–820, A–560–812, A–570–865, A–583–835, A–549–817, A–823–811, C–533–821, C–560–813, C–549–818]

Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on certain hot-rolled carbon steel flat products from India, Indonesia, the People's Republic of China (China), Taiwan, Thailand, and Ukraine would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD orders. Additionally, as a result of the determinations by Commerce and the ITC that revocation of the countervailing duty (CVD) orders on certain hot-rolled carbon steel flat products from India, Indonesia, and Thailand would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the CVD orders.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith at (202) 482–5255 (Thailand CVD order), or Chelsey Simonovich at (202) 482–1979 (India, Indonesia, China, Taiwan, Thailand, and Ukraine AD orders), or Jean Valdez at (202) 482–3855 (India and Indonesia CVD orders).

SUPPLEMENTARY INFORMATION:

Background

In 2001, Commerce published the AD orders on certain hot-rolled carbon steel flat products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine and the CVD orders on certain hot-rolled carbon steel flat products from India, Indonesia, and Thailand.[1] On February 5, 2019, Commerce initiated the third five-year (sunset) reviews of the AD and CVD orders on certain hot-rolled carbon steel flat products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine, pursuant to section 751(c) and 752 of the Tariff Act of 1930, as amended (the Act).[2] As a result of its reviews, Commerce found that revocation of these *Orders* would likely lead to continuation or recurrence of dumping and countervailable subsidies, and notified the ITC of the magnitude of the margins of dumping and the subsidy rates likely to prevail should these *Orders* be revoked.[3]

On August 19, 2019, the USITC published its determination, pursuant to section 751(c)(1) and section 752(a) of the Act, that revocation of the AD orders on certain hot-rolled carbon steel flat products from India, Indonesia, China, Taiwan, Thailand, and Ukraine and the CVD orders on certain hot-rolled carbon steel flat products from India, Indonesia, and Thailand would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

The merchandise subject to the *Orders* is certain hot rolled carbon steel flat products. For a complete description of the scope of these *Orders, see* the Issues and Decision Memoranda.[5]

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of these *Orders* would likely lead to continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(c) and section 751(d)(2) of the Act, Commerce hereby orders the continuation of the AD orders on certain hot-rolled carbon steel flat products from India, Indonesia, China, Taiwan, Thailand, and Ukraine and the continuation of the CVD orders on certain hot-rolled carbon steel flat products from India, Indonesia, and Thailand.

U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year (sunset) reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–18371 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India,* 66 FR 60194 (December 3, 2001); *see also Antidumping Duty Order: Certain Hot-Rolled Carbon Steel flat Products from Indonesia,* 66 FR 60192 (December 3, 2001); *Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia,* 66 FR 60198 (December 3, 2001); *Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 60197 (December 3, 2001); *Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China,* 66 FR 59561 (November 29, 2001); *Notice of Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products from Taiwan,* 66 FR 59563 (November 29, 2001); *Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 59562 (November 29, 2001); and *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat from Ukraine,* 66 FR 59559 (November 29, 2001), (collectively, the *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 1705 (February 5, 2019).

[3] *See Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia: Final Results of the Expedited Sunset Reviews of the Countervailing Duty Orders,* 84 FR 27242 (June 12, 2019); *see also Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine; Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 84 FR 26817 (June 10, 2019); and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of the Third Expedited Five Year (Sunset) Review of the Countervailing Duty Order,* 84 FR 27085 (June 11, 2019).

[4] *See Hot-Rolled Steel Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine; Determination,* 84 FR 42948 (August 19, 2019).

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Countervailing Duty Orders on Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia,'' dated June 5, 2019; *see also* Memorandum, ''Issues and Decision Memorandum: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders on Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine,'' dated June 5, 2019; and Memorandum, ''Issues and Decision Memorandum for the Final Results of the Third Expedited Five-Year Sunset Review of the Countervailing Duty Order on Certain Hot-Rolled Carbon Steel Flat Products from Thailand,'' dated June 5, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on small diameter graphite electrodes from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margins likely to prevail are indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn, 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) 482–0339.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2009, Commerce issued an AD order on small diameter graphite electrodes from China.[1]

On June 23, 2014, Commerce published the notice of continuation of the *Order.*[2] On May 1, 2019, Commerce published the notice of initiation of the second sunset review of the *Order.*[3]

On May 16, 2019, Commerce received notice of intent to participate from Tokai Carbon GE LLC (Tokai Carbon), within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] Tokai Carbon, a domestic producer of the subject merchandise, claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (the Act).[5] On May 31, 2019, Commerce received adequate substantive responses from Tokai Carbon within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[6] We received no substantive responses from any respondent interested parties. 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 merchandise covered by the *Order* includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by the *Order* also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrodes. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the *Order* are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8545.11.0010, 3801.10, and 8545.11.0020. The HTSUS numbers are provided for convenience and customs purposes, but the written description of the scope is dispositive.

Analysis of Comments Received

All issues raised for the final results of this sunset review are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum.[7] The issues discussed in the Issues and Decision Memorandum include the likelihood of the continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

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* on small diameter graphite electrodes from China would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margin of dumping likely to prevail if the *Order* is revoked would be up to 159.64 percent.[8]

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results of this expedited sunset review in accordance with sections 751(c), 752(c), and 777(i) of the Act, and 19 CFR 351.218.

Dated: August 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Issues Addressed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. History of the Proceeding
V. Legal Framework
VI. Discussion of the Issues

[1] *See Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 8775 (February 26, 2009) (*Order*).

[2] *See Small Diameter Graphite Electrodes From the People's Republic of China: Continuation of Antidumping Duty Order,* 79 FR 35523 (June 23, 2014).

[3] *See Initiation of Five-Year (Sunset) Review,* 84 FR 18477 (May 1, 2019).

[4] *See* Tokai Carbon's Letter, ''Five-Year (2nd Sunset) Review of Antidumping Duty Order—Notice of Intent to Participate,'' dated May 16, 2019.

[5] *Id.*

[6] *See* Tokai Carbon's Letter, ''Five-Year (2nd Sunset) Review of Antidumping Duty Order—Domestic Industry's Substantive Response,'' dated May 31, 2019.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Second Sunset Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *Id.*

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margin of Dumping Likely to Prevail

VII. Final Results of Expedited Sunset Review

VIII. Recommendation

[FR Doc. 2019–18439 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Partial Rescission of 2017–2018 Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is partially rescinding the administrative review of the countervailing order on certain hardwood plywood products from the People's Republic of China for the period of review (POR), April 25, 2017, through December 31, 2018.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Omar Qureshi, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone 202.482.5307

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on certain hardwood plywood products from the People's Republic of China (China).[1] On April 1, 2019, based on a timely requests for review,[2] Commerce published in the **Federal Register** a notice of initiation of an administrative review of the countervailing duty order on certain hardwood plywood products from China with respect to 59 companies, covering the POR.[3]

Rescission of Review

From June 21, 2019, to July 25, 2019, multiple entities timely withdrew their request for administrative review.[4] Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind and administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 day of the date of publication of the notice of initiation of the requested review. Multiple entities requested reviews and timely withdrew their requests for review. As a result, Commerce is rescinding, in part, the administrative review of certain hardwood plywood products from China for the following 47 entities where a request for review was timely withdrawn: Anhui Hoda Wood Co., Ltd; Celtic Co., Ltd; Cosco Star International Co., Ltd.; Feixian Longteng Wood Co., Ltd.; Golder International Trade Co., Ltd.; Huainan Mengping Import and Export Co., Ltd; Jiangsu Top Point International Co., Ltd; Jiangsu Top Point International Co., Ltd.; Jiaxing Gsun Imp. & Exp. Co., Ltd.; Jiaxing Hengtong Wood Co., Ltd.; Lianyungang Yuantai International Trade Co., Ltd.; Linyi Chengen Import and Export Co., Ltd.; Linyi City Dongfang Jinxin Economic and Trade Co., Ltd. (a/k/a; Linyi City Dongfang Jinxjin Economic and Trade Co., Ltd.); Linyi Dahua Wood Co., Ltd.; Linyi Evergreen Wood Co., Ltd; Linyi Glary Plywood Co., Ltd.; Linyi Hengsheng Wood Industry Co., Ltd.;

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 2816 (February 8, 2019).

[2] *See* Letter from Canusa Wood Products Ltd., ''Administrative Review of the Countervailing Duty Order on Certain Hardwood Plywood Products from the People's Republic of China: Request for Review,'' dated February 28, 2019; *see* Letter from Cha Trading LLC, ''Certain Hardwood Plywood from the People's Republic of China: Request for Administrative Review,'' dated February 28, 2019; *see* Letter from Concannon Corp., ''Administrative Review of the Countervailing Duty Order on Certain Hardwood Plywood Products from the People's Republic of China: Request for Review,'' dated February 28, 2019; *see* Letter from the Law Office of DeKieffer and Horgan, PLLC, ''Hardwood Plywood Products from the People's Republic of China: Request for Administrative Review,'' dated February 28, 2019; *see* Letter from the Law Offices of Husch Blackwell, ''Certain Hardwood Plywood Products from China: Request for Administrative Review,'' dated February 28, 2019; *see* Letter from Richmond International Forest Products LLC, ''Administrative Review of the Countervailing Duty Order on Certain Hardwood Plywood Products from the People's Republic of China: Request for Review, dated February 28, 2019; *see* Letter from Sierra Forest Products Inc., ''Administrative Review of the Countervailing Duty Order on Certain Hardwood Plywood Products from the People's Republic of China: Request for Review,'' dated February 28, 2019; *see* Letter from Shandong Huaxin Jiasheng Wood Co., Ltd., ''Certain Hardwood Plywood Products from the People's from the People's Republic of China: Request for Administrative Review,'' dated February 28, 2019; *see* Letter from Taraca Pacific Inc., ''Administrative Review of the Countervailing Duty Order on Certain Hardwood Plywood Products from the People's Republic of China: Request for Review,'' dated February 28, 2019; *see* Letter from Vietnam Finewood Company Limited, ''Hardwood Plywood Products from the People's Republic of China: Request for Administrative Review,'' dated February 28, 2019; and *see* Letter from the Law Office of Husch Blackwell, ''Certain Hardwood Plywood Products from China: Correction to Request for Administrative Review,'' dated March 1, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200 (April 1, 2019); s*ee also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019).

[4] *See* Letter from Richmond International Forest Products LLC, '' Administrative Review of the Antidumping and Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated June 21, 2019; *see* Letter from Canusa Wood Products Ltd., ''Administrative Review of the Antidumping and Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Requests for Review,'' dated June 21, 2019; *see* Letter from Concannon Corp., ''Administrative Review of the Antidumping and Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated June 21, 2019; *see* Letter from Sierra Forest Products Inc., ''Administrative Review of the Antidumping and Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated June 21, 2019; *see* Letter from Concannon Corp., ''Administrative Review of the Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated June 28, 2019; *see* Letter from Richmond International Forest Products LLC, ''Administrative Review of the Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Requests for Review,'' dated June 28, 2019; *see* Letter from Canusa Wood Products Ltd., ''Administrative Review of the Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated June 28, 2019; Letter from the Law Offices of DeKieffer & Horgan, ''Hardwood Plywood Products from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated June 25, 2019; *see* Letter from Vietnam Finewood Company Limited, ''Hardwood Plywood Products from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated June 28, 2019; *see* Letter from Cosco Star International Co., Ltd., ''Certain Hardwood Plywood Products from China: Withdrawal of Request for Administrative Review,'' dated June 28, 2019; *see* Letter from Taraca Pacific Inc., ''Administrative Review of the Antidumping and Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated June 28, 2019; *see* Letter from Richmond International Forest *Products* LLC, ''Administrative Review of the Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated June 29, 2019; see Letter from Taraca Pacific Inc., ''Administrative Review of the Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review,'' dated July 1, 2019; *see* Letter from Richmond International Forest Products LLC, ''Administrative Review of the Countervailing Duty Order on Plywood Products from the People's Republic of China: Withdrawal of Request for Review and Correction to June 21 Submission,'' dated July 1, 2019; *see* Letter from Lianyungang Yuantai International Trade Co., Ltd., ''Certain Hardwood Plywood Products from China: Withdrawal of Request for Administrative Review,'' dated July 1, 2019; and *see* Letter from Linyi Dahua Wood Co., Ltd. (Linyi Dahua), ''Certain Hardwood Plywood Products from China: Withdrawal from Administrative Review,'' dated July 25, 2019. Linyi Dahua's withdrawal of review request was timely because it was submitted within 90 days of the corrected initiation notice that published on May 2, 2019, in which it was first listed as a company under review.

Linyi Huasheng Yongbin Wood Co., Ltd.; Linyi Jiahe Wood Industry Co., Ltd; Linyi Linhai Wood Co., Ltd.; Linyi Mingzhu Wood Co., Ltd; Linyi Sanfortune Wood Co., Ltd; Qingdao Good Faith Import and Export Co., Ltd; Shandong Dongfang Bayley Wood Co., Ltd; Shandong Jinluda International Trade Co., Ltd.; Shandong Qishan International Trading Co., Ltd.; Shandong Senmanqi Import & Export Co., Ltd.; Shandong Shengdi International Trading Co., Ltd.; Shanghai Brightwood Trading Co., Ltd.; Shanghai Futuwood Trading Co., Ltd.; Suining Pengxiang Wood Co., Ltd; Suqian Hopeway International Trade Co., Ltd; Suzhou Fengshuwan Import and Export Trade Co., Ltd. a/k/a Suzhou Fengshuwan I&E Trade Co., Ltd.; Sumec International Technology Co., Ltd; Suzhou Oriental Dragon Import and Export Co., Ltd; Vietnam Finewood Company Limited; Win Faith Trading Limited; Xuzhou Andefu Wood Co., Ltd.; Xuzhou DNT Commercial Co., Ltd.; Xuzhou Jiangheng Wood Products Co., Ltd.; Xuzhou Jiangyang Wood Industries Co., Ltd; Xuzhou Longyuan Wood Industry Co., Ltd.; XuZhou PinLin International Trade Co., Ltd.; Xuzhou Shengping Imp and Exp Co., Ltd.; Xuzhou Timber International Trade Co., Ltd.; and Yishui Zelin Wood Made Co., Ltd.

Assessment

We will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of 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 the countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 22, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–18440 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–903, A–201–852, A–523–813]

Polyethylene Terephthalate Sheet From the Republic of Korea, Mexico, and the Sultanate of Oman: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 19, 2019.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Charles Doss, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 9, 2019, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of polyethylene terephthalate sheet (PET sheet) from the Republic of Korea (Korea), Mexico, and the Sultanate of Oman (Oman).[1] The Petitions were filed in proper form by Advanced Extrusion Inc. (Advanced Extrusion), Ex-Tech Plastics, Inc. (Ex-Tech), and Multi-Plastics Extrusions, Inc. (Multi-Plastics) (collectively, the petitioners).

Between July 12 through July 22, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[2] The petitioners filed responses to the supplemental questionnaires between July 17 and July 23, 2019.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of PET sheet from Korea, Mexico, and Oman are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing PET sheet in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners are interested parties, as defined in section 771(9)(C) of the Act. Commerce also determines that the petitioners have sufficient industry support with respect to the initiation of the requested AD investigations.[4]

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[1] *See* Petitioner's Letter, ''Polyethylene Terephthalate (''PET'') Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman—Petitions for the Imposition of Antidumping Duties,'' dated July 9, 2019 (the Petitions).

[2] *See* Commerce's Letters, ''Petition for the Imposition of Antidumping Duties on Imports of Polyethylene Terephthalate Sheet from Mexico: Supplemental Questions;'' ''Petition for the Imposition of Antidumping Duties on Imports of Polyethylene Terephthalate Sheet from the Republic of Korea: Supplemental Questions;'' and ''Petition for the Imposition of Antidumping Duties on Imports of Polyethylene Terephthalate Sheet from the Sultanate of Oman: Supplemental Questions.'' All of these documents are dated July 12, 2019; *see also* Commerce's Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Polyethylene Terephthalate Sheet from the People's Republic of Korea, Mexico, and the Sultanate of Oman: Supplemental Questions,'' dated July 15, 2019; Commerce Letters, ''Phone Call with Counsel to the Petitioners,'' dated July 22, 2019, and ''Phone Call with Counsel to the Petitioners,'' dated July 22, 2019.

[3] *See* Petitioner's Letter, ''Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman—Petitioners' Supplement to Volume I Relating to General Issues,'' dated July 17, 2019 (General Issues Supplement); *see also* the Petitioner's Letters, ''Polyethylene Terephthalate Sheet from the Republic of Korea—Petitioners' Supplement to Volume II Relating to the Republic of Korea Antidumping Duties;'' ''Polyethylene Terephthalate Sheet from Mexico—Petitioners' Supplement to Volume III Relating to Mexico Antidumping Duties;'' and ''Polyethylene Terephthalate Sheet from Oman—Petitioners' Supplement to Volume IV Relating to Oman Antidumping Duties.'' All of these documents are dated July 17, 2019; *see also* the petitioners' Letters, ''Polyethylene Terephthalate Sheet from Korea, Mexico, and Oman—Petitioners' Response to the Commerce Department's July 22, 2019 File Memorandum,'' dated July 23, 2019 (Second General Issues Supplement), and ''Polyethylene Terephthalate Sheet from Mexico—Petitioners' Response to the Commerce Department's July 22, 2019 File Memorandum,'' dated July 23, 2019 (Second AD Mexico Supplement).

[4] *See* the Petitions at 3–4.

Period of Investigation

Because the Petitions were filed on July 9, 2019, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Korea, Mexico, and Oman investigations is July 1, 2018 through June 30, 2019.

Scope of the Investigations

The merchandise covered by these investigations is PET sheet from Korea, Mexico, and Oman. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Scope Comments

During our review of the Petitions, Commerce issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.[5] As a result, the scope of the Petitions was modified to clarify the description of the merchandise covered by the Petitions. The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on September 9, 2019, which is the next business day after September 8, 2019, 20 calendar days from the signature date of this notice.[8] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on September 19, 2019, which is 10 calendar days from the initial comment deadline.[9]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of PET sheet to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe PET sheet, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on September 9, 2019, which is the next business day after September 8, 2019, 20 calendar days from the signature date of this notice.[11] Any rebuttal comments must be filed by 5:00 p.m. ET on September 19, 2019. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute

[5] *See* General Issues Supplement at 3–6; *see also* Second General Issues Supplement at 3.

[6] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] Because September 8, 2019 falls on a weekend, consistent with 19 CFR 303(b)(1), Commerce will accept documents filed on the next business day.

[9] *See* 19 CFR 351.303(b).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] Because September 8, 2019 falls on a weekend, consistent with 19 CFR 303(b), Commerce will accept documents filed on the next business day.

directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the Petitions.[14] Based on our analysis of the information submitted on the record, we have determined that PET sheet, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

On July 29, 2019, Commerce extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 732(c)(4)(D) of the Act, because it was not ''clear from the Petitions whether the industry support criteria have been met . . .''[16]

On July 30, 2019, we issued polling questionnaires to all known producers of PET sheet (whether sold or internally consumed) identified in the Petitions, submissions from other interested parties, and by Commerce's own research.[17] We requested that each company complete the polling questionnaire and certify its response by the due date specified in the cover letter to the questionnaire.[18]

Our analysis of the data indicates that the domestic producers of PET sheet who support the Petitions account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[19] Accordingly, Commerce determines that the industry support requirements of section 732(c)(4)(A) have been met.

Therefore, Commerce determines that the petitioners filed these Petitions on behalf of the domestic industry in accordance with section 732(b)(1) of the Act because they are interested parties as defined in section 771(9)(C) of the Act and have sufficient industry support.[20]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports from Korea, Mexico, and Oman exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; lost sales and lost revenue; underselling and price depression or suppression; and a decline in the domestic industry's capacity utilization, shipments, production, and financial performance.[22] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[23]

Allegations of Sales at LTFV

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate investigations of PET sheet from Korea, Mexico, and Oman. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist for each country.

Export Price

For Korea, Mexico, and Oman, the petitioners based U.S. price on pricing information for PET sheet produced in,

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Volume I of the Petitions at 11–13; *see also* General Issues Supplement at 9–12 and Exhibit GEN-Supp-3.

[15] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Polyethylene Terephthalate Sheet from the Republic of Korea (Korea AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petitions Covering Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman (Attachment II); *see also* Antidumping Duty Investigation Initiation Checklist: Polyethylene Terephthalate Sheet from Mexico (Mexico AD Initiation Checklist) at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Polyethylene Terephthalate Sheet from the Sultanate of Oman (Oman AD Initiation Checklist) at Attachment II.

[16] *See Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petitions: Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman,* 84 FR 39801 (August 12, 2019); *see also* Korea AD Initiation Checklist at Attachment II; Mexico AD Initiation Checklist at Attachment II; and Oman AD Initiation Checklist at Attachment II.

[17] *See* Memorandum, ''Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman: Polling Questionnaire,'' dated July 30, 2019; *see also* Volume I of the Petitions at 1–2 and Exhibits GEN–1 and GEN–2; General Issues Supplement at 6–8 and Exhibit GEN-Supp-1; the petitioners' Letter, ''Polyethylene Terephthalate Sheet from Oman—Petitioners' Response to OCTAL's Request for the Department to Refuse to Initiate AD Investigation for Lack of Standing,'' dated July 23, 2019 at 5 and Exhibit 1; Letter from OCTAL, ''OCTAL's Request for the Department To Refuse To Initiate AD Investigation for Lack of Standing—Polyethylene Terephthalate (PET) Sheet from the Sultanate of Oman,'' dated July 18, 2019 at 5 and Exhibit 1; and Letter from OCTAL, ''OCTAL's Reply to Petitioners' Comments on Lack of Standing—Polyethylene Terephthalate (PET) Sheet from the Sultanate of Oman,'' dated July 25, 2019 at Exhibit 2.

[18] For a detailed discussion of the responses received, *see* Korea AD Initiation Checklist at Attachment II; *see also* Mexico AD Initiation Checklist at Attachment II; and Oman AD Initiation Checklist at Attachment II. The polling questionnaire and questionnaire responses are on file electronically via ACCESS.

[19] *See* Korea AD Initiation Checklist, at Attachment II; *see also* Mexico AD Initiation Checklist at Attachment II; and Oman AD Initiation Checklist, at Attachment II.

[20] *See* Korea AD Initiation Checklist at Attachment II; *see also* Mexico AD Initiation Checklist at Attachment II; and Oman AD Initiation Checklist at Attachment II.

[21] *See* Volume I of the Petitions at 13–14 and Exhibit GEN–7.

[22] *See* Volume I of the Petitions at 10, 13–26 and Exhibits GEN–5 and GEN–7 through GEN–12; *see also* General Issues Supplement at 13 and Exhibits GEN-Supp-1 and GEN-Supp-4.

[23] *See* Korea AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman (Attachment III); *see also* Mexico AD Initiation Checklist at Attachment III; and Oman AD Initiation Checklist at Attachment III.

and exported from Korea, Mexico, and Oman and offered for sale in the United States.[24] Where applicable, the petitioners made deductions from U.S. price for movement and other expenses, consistent with the terms of sale.[25]

Normal Value

For Mexico, Korea, and Oman, the petitioners based NV on home market prices obtained through market research for PET sheet produced in and sold, or offered for sale, in Mexico, Korea, and Oman within the POI.

Normal Value Based on Constructed Value

As noted above, the petitioners obtained home market prices for Mexico and Oman, but demonstrated that these prices were below the cost of production (COP); therefore, the petitioners also calculated NV based on constructed value (CV), pursuant to section 773(a)(4) of the Act.[26] Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, profit, and packing expenses.

For Mexico and Oman, the petitioners calculated the COM based on domestic producer's input factors of production (FOP) and usage rates for raw materials, labor, and energy.[27] The petitioners valued the input FOPs using publicly available data on costs specific to Mexico and Oman during the proposed POI.[28] Specifically, the petitioners based the prices for raw material inputs on publicly available import data for Mexico and Oman.[29] The petitioners valued labor and energy costs using publicly available sources for Mexico and Oman.[30] The petitioners calculated the factory variable overhead for Mexico and Oman based on the experience of domestic producers. The petitioners calculated the factory fixed overhead, SG&A expenses, financial expenses, and profit for Mexico and Oman based on the experience of a producer of comparable merchandise from each of these countries.[31]

Fair Value Comparisons

Based on the data provided by the Petitions, there is reason to believe that imports of PET sheet from Korea, Mexico, and Oman are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of export price (EP) to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for PET sheet for each of the countries covered by this initiation are as follows: (1) Korea—44.13 and 52.01 percent;[32] (2) Mexico—27.60 to 115.46 percent;[33] and (3) Oman—75.02 and 114.43 percent.[34]

Initiation of LTFV Investigations

Based upon the examination of the Petitions, and supplemental responses, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of PET sheet from Korea, Mexico, and Oman are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

The petitioners named 17 companies in Korea,[35] nine companies in Mexico,[36] and one company in Oman,[37] as producers/exporters of PET sheet. Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select respondents in Korea, Mexico, and Oman based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed with the scope in the Appendix, below.[38]

On August 19, 2019, Commerce released CBP data on imports of PET sheet from Korea, Mexico, and Oman under APO to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of these investigations.[39] We further stated that we will not accept rebuttal comments.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Korea, Mexico, and Oman via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of PET sheet from Mexico, Korea, and Oman are materially injuring, or threatening material injury to, a U.S. industry.[40] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[41] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v)

[24] *See* Mexico AD Initiation Checklist; Korea AD Initiation Checklist; and Oman AD Initiation Checklist.

[25] *Id.*

[26] *See* Mexico AD Initiation Checklist and Oman AD Initiation Checklist. In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *See* Korea AD Initiation Checklist.

[33] *See* Mexico AD Initiation Checklist.

[34] *See* Oman AD Initiation Checklist.

[35] *See* Volume I of the Petitions at Exhibit GEN–4.

[36] *Id.*

[37] *Id.*

[38] *See, e.g., Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 58223, 58227 (November 19, 2018).

[39] *See* Memoranda, ''Polyethylene Terephthalate Sheet from the Republic of Korea: U.S. Customs and Border Protection Data for Respondent Selection Purposes;'' ''Polyethylene Terephthalate Sheet from Mexico: U.S. Customs and Border Protection Data for Respondent Selection Purposes;'' and ''Polyethylene Terephthalate Sheet from the Sultanate of Oman: U.S. Customs and Border Protection Data for Respondent Selection Purposes;'' dated August 18, 2019.

[40] *See* section 733(a) of the Act.

[41] *Id.*

evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [42] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[43] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.[44] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.[45] Parties must use the certification formats provided in 19 CFR 351.303(g).[46] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: August 19, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is raw, pretreated, or primed polyethylene terephthalate sheet, whether extruded or coextruded, in nominal thicknesses of equal to or greater than 7 mil (0.007 inches or 177.8 μm) and not exceeding 45 mil (0.045 inches or 1143 μm) (PET sheet). The scope includes all PET sheet whether made from prime (virgin) inputs or recycled inputs, as well as any blends thereof. The scope includes all PET sheet meeting the above specifications regardless of width, color, surface treatment, coating, lamination, or other surface finish.

The merchandise subject to these investigations is properly classified under statistical reporting number 3920.62.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2019–18370 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–812]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria: Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain carbon and alloy steel cut-to-length plate from Austria for the period May 1, 2018, through April 30, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Preston N. Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041.

SUPPLEMENTARY INFORMATION:

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[42] *See* 19 CFR 351.301(b).

[43] *See* 19 CFR 351.301(b)(2).

[44] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[45] *See* section 782(b) of the Act.

[46] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Background

On May 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain carbon and alloy steel cut-to-length plate from Austria for the period May 1, 2018, through April 30, 2019.[1] On May 31, 2019, voestalpine Böhler Edelstahl GmbH & Co KG and voestalpine Böhler Bleche GmbH & Co KG (collectively, voestalpine), producers/exporters of certain carbon and alloy steel cut-to-length plate, filed a timely request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Pursuant to this request, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of voestalpine.[3] On July 30, 2019, voestalpine filed a timely withdrawal of request for the administrative review and a request for rescission of the administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, voestalpine, the only party to file a request for review, withdrew its request by the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on certain carbon and alloy steel cut-to-length plate from Austria for the period May 1, 2018, through April 30, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of certain carbon and alloy steel cut-to-length plate from Austria. Antidumping duties shall be assessed at rates 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). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/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.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 22, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–18438 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See* voestalpine's Letter, ''Carbon and Alloy Steel Cut-to-Length Plate from Austria: Request for Antidumping Duty Administrative Review,'' dated May 31, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[4] *See* voestalpine's Letter, ''Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria: Withdrawal of Review Request and Request for Rescission,'' dated July 30, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 22, 2019, the Department of Commerce (Commerce) published in the **Federal Register** the preliminary results of the thirteenth administrative review of the antidumping duty order on certain warmwater shrimp from the Socialist Republic of Vietnam (Vietnam). Based upon our analysis of the comments received, we determine that sales by Fimex VN and Nha Trang Seaproduct Company were not made below normal value (NV) during the period of review (POR) February 1, 2017 through January 31, 2018.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, 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) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2019, Commerce published the *Preliminary Results.*[1] On May 22, 2019, Fimex VN[2] and Quang Minh Seafood Co., Ltd.[3] filed case briefs. On May 28, 2019, the petitioner[4] filed its rebuttal brief.

Scope of the Order[5]

The merchandise subject to the *Order* is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. The written description of the scope of the *Order* is dispositive. A full description of the scope of the *Order* is available in the accompanying Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review

[1] See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018, 84 FR 16648 (April 22, 2019) (Preliminary Results) and accompanying Preliminary Decision Memorandum.

[2] *See* Fimex VN's Letter, ''Case Brief,'' dated May 22, 2019.

[3] *See* Quang Minh Seafood Co., Ltd.'s Letter, ''Case Brief,'' dated May 22, 2019.

[4] Ad Hoc Shrimp Trade Action Committee (the petitioner). *See* Petitioner's Letter, ''Rebuttal Brief,'' dated May 28, 2019.

[5] See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 FR 5152 (February 1, 2005) (Order).

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

are addressed in the accompanying Issues and Decision Memorandum.[7] A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum is attached as Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that 18 companies[8] under active review did not have any reviewable transactions during the POR. As we have not received any information to contradict this determination, Commerce determines that these 18 companies did not have any reviewable entries of subject merchandise during the POR, and will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification, for these final results.

Final Results of Review

In the *Preliminary Results,* Commerce found that 67 companies for which a review was requested have not established eligibility for a separate rate and were considered to be part of the Vietnam-wide entity.[9] We continue to find that, for the final results, these 67 companies remain ineligible for a separate rate (*see* Appendix II). Under Commerce's policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[10] Because no party requested a review of the Vietnam-wide entity, the entity is not under review and the entity's rate is not subject to change.

For companies for which a review was requested and that have established eligibility for a separate rate, Commerce determines that weighted-average dumping margins of zero percent exist for each during the period February 1, 2017 through January 31, 2018:

Exporter[11]	Weighted-average margin (percent)
Fimex VN, and Sao Ta Seafood Factory[12]	0.00
Nha Trang Seaproduct Company,[13] and NT Seafoods Corporation, and Nha Trang Seafoods—F89 Joint Stock Company, and NTSF Seafoods Joint Stock Company	0.00
Bac Lieu Fisheries Joint Stock Company	0.00
Bentre Forestry and Aquaproduct Import-Export Joint Stock Company, aka FAQUIMEX	0.00
C.P. Vietnam Corporation	0.00
Cadovimex Seafood Import-Export and Processing Joint Stock Company	0.00
Camau Frozen Seafood Processing Import Export Corporation, aka Camimex	0.00
Camau Seafood Processing and Service Joint Stock Corporation, aka Camau Seafood Processing and Service Joint-Stock Corporation, aka CASES	0.00
Can Tho Import Export Fishery Limited Company, aka CAFISH	0.00
Cuulong Seaproducts Company, aka Cuulong Seapro	0.00
Fine Foods Co, aka FFC	0.00

[7] *Id.*

[8] *See Preliminary Results,* 84 FR at 16648. These 18 companies are: (1) Au Vung One Seafood Processing Import & Export Joint Stock Company; (2) Au Vung Two Seafood Processing Import & Export Joint Stock Company; (3) Bien Dong Seafood Co., Ltd.; (4) BIM Foods Joint Stock Company also initiated as BIM Seafood Joint Stock Company; (5) Cafatex Corporation; (6) Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho; (7) Taydo Seafood Enterprise; (8) Cam Ranh Seafoods; (9) Green Farms Joint Stock Company also initiated as Green Farms Seafoods Joint Stock Company; (10) Investment Commerce Fisheries Corporation (''INCOMFISH'') also initiated as Investment Commerce Fisheries Corporation (Incomfish); (11) Khanh Sung Co., Ltd.; (12) NGO BROS Seaproducts Import-Export One Member Company Limited (''NGO BROS Company'') also initiated as Ngo Bros Seaproducts Import-Export One Member Company Limited (''Ngo Bros. Co., Ltd.''), and Ngo Bros Seaproducts Import-Export One Member Company Limited (Ngo Bros); (13) Tacvan Frozen Seafood Processing Export Company also initiated as Tacvan Frozen Seafood Processing Export Company (Tacvan Seafoods Co.) and Tacvan Seafoods Company (''TACVAN''); (14) Thanh Doan Sea Products Import & Export Processing Joint Stock Company Thadimexco also initiated as Thanh Doan Sea Products Import & Export Processing Joint-Stock Company (THADIMEXCO); (15) Thong Thuan—Cam Ranh Seafood Joint Stock Company also initiated as Thong Thuan—Cam Ranh Seafood Joint Stock Company (T&T Cam Ranh) and Thong Thuan Cam Ranh Seafood Joint Stock Company (''T&T Cam Ranh''); (16) Thong Thuan Seafood Company Limited; (17) Trung Son Seafood Processing Joint Stock Company also initiated as Trung Son Corp.; and (18) Vinh Hoan Corp.

[9] *See* Appendix II for a full list of the 67 companies (accounting for duplicate names initiated upon); *see also Preliminary Results* at Appendix II.

[10] *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).

[11] Due to the issues we have had in past segments of the proceeding with variations of exporter names related to this *Order,* we remind exporters that the names listed in the rate box are the exact names, including spelling and punctuation which Commerce will provide to U.S. Customs and Border Protection (CBP) and which CBP will use to assess POR entries and collect cash deposits. Any names with punctuation variations, such as all capitalizations, dashes, periods, or commas, or abbreviations of the word Company to ''Co.'' and Limited to ''Ltd.'' can be confirmed by Commerce in the event CBP inquiries about such variations. Commerce reminds interested parties that claimed affiliates are not automatically added to an exporter's rate box unless Commerce has made an affiliation determination for that exporter in the instant, or in prior, segments of the proceeding. Furthermore, inclusion of alternate trade names in an exporter's rate box must be supported by evidence on the record that the alternate trade name: (1) Appears on the exporter's business license (as an exporter), and (2) appears on commercial documents for CBP's examination upon entry. *See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2016–2017,* 83 FR 46704 (September 14, 2018), and accompanying Issues and Decision Memorandum at Comment 3.

[12] Commerce has determined for these final results that Fimex VN and Sao Ta Seafood Factory are affiliated within the meaning of section 771(33) of the Act and comprise a single entity pursuant to 19 CFR 351.401(f). For a complete discussion of this determination, *see* Issues and Decision Memorandum at 3–6.

[13] Commerce previously determined Nha Trang Seaproduct Company to be part of a single entity along with NT Seafoods Corporation, Nha Trang Seafoods—F89 Joint Stock Company, and NTSF Seafoods Joint Stock Company. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review,* 76 FR 12054, 12056 (March 4, 2012), unchanged *in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158 (September 12, 2011). As the single entity has not reported changes since the preceding administrative review regarding the corporate or legal structure of the companies within the single entity, we continue to find that these companies are affiliated and comprise a single entity to which we will assign a single rate.

Exporter [11]	Weighted-average margin (percent)
Frozen Seafoods Factory No. 32	0.00
Hai Viet Corporation, aka HAVICO	0.00
Kim Anh Company Limited	0.00
Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Jostoco	0.00
Minh Hai Joint-Stock Seafood Processing Company, aka Sea Minh Hai, aka Seaprodex Minh Hai, aka Minh Hai Joint Stock Seafoods	0.00
Ngoc Tri Seafood Joint Stock Company	0.00
Q N L Company Limited	0.00
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd	0.00
Seaprimexco Vietnam, aka Seaprimexco	0.00
Seafoods and Foodstuff Factory	0.00
Taika Seafood Corporation	0.00
Thong Thuan Company Limited	0.00
Thuan Phuoc Seafoods and Trading Corporation	0.00
Trang Khanh Trading Company Limited, aka Trang Khanh Seafood Co., Ltd	0.00
Trong Nhan Seafood Company Limited	0.00
UTXI Aquatic Products Processing Corporation	0.00
Viet Foods Co., Ltd	0.00
Viet I-Mei Frozen Foods Co., Ltd	0.00
Vietnam Fish One Co., Ltd	0.00
Vietnam Clean Seafood Corporation, aka Vina Cleanfood, aka Viet Nam Clean Seafood Corporation	0.00

Disclosure and Public Comment

Normally, Commerce will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, as we have made no changes to the margin calculations for Fimex VN or Nha Trang Seaproduct Company since the *Preliminary Results,* there are no final calculations to disclose for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. As each respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14]

Additionally, consistent with its assessment practice in non-market economy (NME) cases, if Commerce continues to determine that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[15]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above, which have a separate rate, a zero cash deposit will be required; (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnam-wide entity; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

[14] See 19 CFR 352.106(c)(2); and *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[15] For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Dated: August 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes From the Preliminary Results
V. Discussion of the Issues
Comment 1: Separate Rate Status for Sao Ta Seafood Factory
Comment 2: Treatment of Quang Minh Seafood Co., Ltd.
VI. Recommendation

Appendix II

Companies Subject to Review Determined To Be Part of the Vietnam-Wide Entity

1. A & CDN Foods Co., Ltd.
2. Amanda Seafood Co., Ltd.
3. An Huy B.T Co. Ltd.
4. Anh Koa Seafood
5. Anh Minh Quan Joint Stock Company
6. Asia Food Stuffs Import Export Co., Ltd.
7. B.O.P Company Limited
8. B.O.P. Limited Co.
9. Binh Dong Fisheries Joint Stock Company
10. Binh Thuan Import—Export Joint Stock Company (THAIMEX)
11. Ca Mau Agricultural Products and Foodstuff Imp-Exp Joint Stock Company (Agrimexco Camau)
12. Cholimex Food Joint Stock Company
13. CJ Cau Tre Foods Joint Stock Company
14. CJ Freshway (FIDES Food System Co., Ltd.)
15. Coastal Fisheries Development Corporation (''COFIDEC'')
16. Danang Seaproducts Import-Export Corporation (SEADANANG)
17. Dong Do Profo., Ltd.
18. Dong Hai Seafood Limited Company
19. Dong Phuong Seafood Co., Ltd.
20. Duc Cuong Seafood Trading Co., Ltd.
21. Gallant Dachan Seafood Co., Ltd.
22. Gallant Ocean (Vietnam) Co., Ltd. also initiated as Gallant Ocean Viet Nam Co. Ltd.
23. Hanh An Trading Service Co., Ltd.
24. Hanoi Seaproducts Import & Export Joint Stock Corporation (Seaprodex Hanoi)
25. Hoa Trung Seafood Corporation (HSC)
26. Hoang Phuong Seafood Factory
27. HungHau Agricultural Joint Stock Company
28. Huynh Huong Seafood Processing
29. Huynh Huong Trading and Import-Export Joint Stock Company
30. JK Fish Co., Ltd.
31. Kaiyo Seafood Joint Stock Company
32. Khai Minh Trading Investment Corporation
33. Khanh Hoa Seafoods Exporting Company (KHASPEXCO)
34. Lam Son Import-Export Foodstuff Company Limited (Lamson Fimexco)
35. Long Toan Frozen Aquatic Products Joint Stock Company
36. Minh Bach Seafood Company Limited
37. Minh Cuong Seafood Import Export Processing Joint Stock Company (''MC Seafood''), also initiated as Minh Cuong Seafood Import-Export Processing (''MC Seafood'')
38. Minh Phu Seafood Corporation
39. My Son Seafoods Factory
40. Nam Hai Foodstuff and Export Company Ltd
41. Namcan Seaproducts Import Export Joint Stock Company (Seanamico)
42. New Wind Seafood Co., Ltd.
43. Nha Trang Fisheries Joint Stock Company, also initiated as Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco'')
44. Nhat Duc Co., Ltd.
45. Nigico Co., Ltd.
46. Phu Cuong Jostoco Corp., also initiated as Phu Cuong Jostoco Seafood Corporation
47. Phu Minh Hung Seafood Joint Stock Company
48. Phuong Nam Foodstuff Corp., also initiated as Phuong Nam Foodstuff Corp., Ltd.
49. Quang Minh Seafood Co., Ltd.
50. Quoc Ai Seafood Processing Import Export Co., Ltd.
51. Quoc Toan Seafood Processing Factory (Quoc Toan PTE)
52. Quy Nhon Frozen Seafoods Joint Stock Company
53. Saigon Aquatic Product Trading Joint Stock Company (APT Co.)
54. Saigon Food Joint Stock Company
55. Seafood Joint Stock Company No.4
56. South Ha Tinh Seaproducts Import-Export Joint Stock Company
57. Special Aquatic Products Joint Stock Company (SEASPIMEX VIETNAM)
58. T & P Seafood Company Limited
59. Tai Nguyen Seafood Co., Ltd.
60. Tan Phong Phu Seafood Co., Ltd. (''TPP Co., Ltd.'') also initiated as Tan Phong Phu Seafood Co., Ltd. (TPP Co. Ltd.)
61. Tan Thanh Loi Frozen Food Co., Ltd.
62. Thien Phu Export Seafood Processing Company Limited
63. Thinh Hung Co., Ltd.
64. Trang Corporation (Vietnam)
65. Trang Khan Seafood Co., Ltd.
66. Viet Nam Seaproducts—Joint Stock Company
67. Viet Phu Foods and Fish Corp.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051]

Hardwood Plywood Products From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has determined that a request for a new shipper review of the antidumping duty order on hardwood plywood products from the People's Republic of China meets the statutory and regulatory requirements for initiation. The period of review for this new shipper review is January 1, 2019 through June 30, 2019.

DATES: Applicable August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, Commerce published the antidumping duty order on hardwood plywood products (plywood) from the People's Republic of China (China).[1] On July 30, 2019, Commerce received a timely new shipper review (NSR) request from Xuzhou Constant Forest Industry Co., Ltd. (Constant Forest), in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c).[2] The deadline for the NSR initiation decision is August 30, 2019.

In its submission, Constant Forest certified that it is both the producer and exporter of the subject merchandise upon which the NSR request is based.[3] Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Constant Forest certified that it did not export plywood to the United States during the period of investigation (POI).[4] Additionally, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Constant Forest certified that, since the initiation of the investigation, it has never been affiliated with any producer or exporter that exported plywood to the United States during the POI, including those not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), Constant Forest also certified that its export activities were not controlled by the Government of China.[6] Constant Forest additionally certified that it has had no subsequent shipments of subject merchandise.[7]

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[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018) (*Order*).

[2] *See* Constant Forest's Letter, ''Certain Hardwood Plywood Products from the People's Republic of China—Request for New Shipper Review,'' dated July 30, 2019.

[3] *Id.* at Exhibit 1.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Constant Forest submitted documentation establishing the following: (1) The date on which the company first shipped plywood for export to the United States and the date on which the plywood was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[8]

Commerce conducted a query of the U.S. Customs and Border Protection (CBP) database and confirmed that Constant Forest's shipment of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The information that Commerce examined was consistent with that provided by Constant Forest in its request. In particular, the CBP data confirmed the price and quantity reported by Constant Forest for the sale that forms the basis of this NSR request. Commerce also confirmed by examining CBP data that Constant Forest's entries were made during the period of review specified by Commerce's regulations.[9]

Period of Review

Pursuant to 19 CFR 351.214(c), an exporter or producer may request an NSR within one year of the date on which its subject merchandise was first entered. Further, 19 CFR 351.214(d)(1) states that Commerce will initiate an NSR in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for review is made during the six-month period ending with the end of the anniversary month or the semi-annual anniversary month, whichever is applicable. In accordance with 19 CFR 351.214(g)(1)(i)(B), the period of review (POR) for an NSR initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semi-annual anniversary month. Constant Forest requested this NSR within one year of the date on which its plywood was first entered, and the request was filed in July 2019, which is the semiannual anniversary month of the *Order.* Therefore, the POR for this NSR is January 1, 2019 through June 30, 2019.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and the information on the record, we find that the request from Constant Forest meets the threshold requirements for the initiation of an NSR for shipments of plywood from China produced and exported during the POR by Constant Forest.[10] However, if the information supplied by Constant Forest is later found to be incorrect or insufficient during the course of this proceeding, Commerce may rescind the review or apply adverse facts available, pursuant to section 776 of the Act, depending upon the facts on record. Unless extended, Commerce intends to issue the preliminary results within 180 days from the date of initiation, and the final results within 90 days from the issuance of the preliminary results.[11]

It is our usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an AD rate separate from the country-wide rate (*i.e.,* a separate rate) provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.[12] Accordingly, Commerce will issue questionnaires to Constant Forest that will include a section requesting information with regard to the company's export activities for the purpose of establishing its eligibility for a separate rate. The review will proceed if the response provides sufficient indication that Constant Forest is not subject to either *de jure* or *de facto* government control with respect to its exports of subject merchandise.

We will conduct this new shipper review in accordance with section 751(a)(2)(B) of the Act, as amended by the Trade Facilitation and Trade Enforcement Act of 2015.[13]

Because Constant Forest certified that it produced and exported subject merchandise, the sale of which is the basis for its request for an NSR, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise produced and exported by Constant Forest.

To assist in its analysis of the *bona fide* nature of Constant Forest's sales, upon initiation of this NSR, Commerce will require Constant Forest to submit, on an ongoing basis, complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to propietary information in this proceeding should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: August 22, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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[8] *Id.* at Exhibit 2.

[9] *See* Memorandum, ''Release of U.S. Customs and Border Protection Information,'' dated concurrently with this notice; *see also* Memorandum, ''Initiation of Antidumping New Shipper Review: Hardwood Plywood Products from the People's Republic of China,'' dated concurrently with this notice (NSR Initiation Checklist).

[10] *See* NSR Initiation Checklist.

[11] *See* section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(i).

[12] *See* Import Administration Policy Bulletin, Number: 05.1. (*http://ia.ita.doc.gov/policy/bull05-1.pdf*).

[13] The Trade Facilitation and Trade Enforcement Act of 2015 removed from section 75l(a)(2)(B) of the Act the provision directing Commerce to instruct Customs and Border Protection to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of a new shipper review.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV035

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Personnel Committee/Committee of the Whole (Closed Session); Snapper Grouper Committee; Protected Resources Committee; Dolphin Wahoo Committee; Executive Finance Committee; Habitat Protection and Ecosystem-Based Management Committee; Joint Habitat Ecosystem, Shrimp, and Golden Crab Committee; and Mackerel Cobia Committee. The Council meeting week will include a training session for Council members on Robert's Rules, a formal public comment period, and a meeting of the full Council.

DATES: The Council meeting will be held from 8:30 a.m. on Monday, September 16, 2019 until 1 p.m. on Friday, September 20, 2019.

ADDRESSES:

Meeting address: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone: (843) 571–1000.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.* Meeting information is available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.*

SUPPLEMENTARY INFORMATION:

Public comment: Written comments may be directed to Gregg Waugh, Executive Director, South Atlantic Fishery Management Council (see **ADDRESSES**) or electronically via the Council's website at *http://safmc.net/safmc-meetings/council-meetings/.* Comments received by close of business the Monday before the meeting (9/9/19) will be compiled, posted to the website as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the website. For written comments received after the Monday before the meeting (after 9/9/19), individuals submitting a comment must use the Council's online form available from the website. Comments will automatically be posted to the website and available for Council consideration. Comments received prior to noon on Thursday, September 19, 2019 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Robert's Rules Training—Monday, September 16, 2019, 8:30 a.m. Until 12 p.m.

1. Council members will receive training on the use of Robert's Rules for meeting purposes.

Personnel Committee/Committee of the Whole—Monday, September 16, 2019, 1:30 p.m. Until 6 p.m. (Closed Session)

1. The Committee/Council will discuss personnel issues and provide guidance to staff.
2. The Committee/Council will conduct executive director interviews and select a new executive director.

Snapper Grouper Committee, Tuesday, September 17, 2019, 8:30 a.m. Until 5:30 p.m.

1. The Committee will receive updates from NOAA Fisheries on commercial catches versus quotas for species under annual catch limits (ACLs) and the status of amendments under formal Secretarial review.

2. The Committee will receive preliminary results from the August 19–21, 2019 Scientific and Statistical Committee (SSC)/Marine Recreational Information Program (MRIP) Workshop to address issues with recreational data.

3. The Committee will review Regulatory Framework Amendment 29 to the Snapper Grouper Fishery Management Plan (FMP) addressing best fishing practices and the use of powerhead gear, discuss outreach needs, and consider recommendation for Council approval for formal Secretarial Review.

4. The Committee will receive an update on Snapper Grouper Abbreviated Framework Amendment 3 addressing management of blueline tilefish and take action as needed.

5. The Committee will review the Wreckfish Individual Transferable Quota (ITQ) Review document and consider recommending approval for formal Secretarial review.

6. The Committee will review Snapper Grouper Regulatory Amendment 33 addressing season modifications for red snapper, consider public hearing comments, select preferred alternatives, and provide guidance to staff as needed.

7. The Committee will review Snapper Grouper Regulatory Amendment 34 addressing Special Management Zones (SMZs) for North Carolina and South Carolina and consider recommending the amendment for public hearings.

8. The Committee will provide guidance on agenda items for the upcoming Snapper Grouper Advisory Panel meeting, review the draft 2021–2026 Vision Blueprint for the Snapper Grouper Fishery, and a white paper on authorized gear for harvesting lionfish and take action as necessary.

Protected Resources Committee, Wednesday, September 18, 2019, 8 a.m. Until 8:30 a.m.

1. The Committee will receive an overview of the Memorandum of Understanding (MOU) between the Council and NOAA Fisheries, discuss and take action as needed.

2. The Committee will receive updates on Biological Opinions for Dolphin Wahoo and Highly Migratory Species Fisheries, updates on other Protected Resources issues, and take action as needed.

Dolphin Wahoo Committee, Wednesday, September 18, 2019, 8:30 a.m. Until 3:45 p.m.

1. The Committee will receive updates from NOAA Fisheries on the status of commercial catches versus annual catch limits.
2. The Committee will receive a report from the Dolphin Wahoo Advisory Panel, discuss recommendations, and take action as necessary.
3. The Committee will review the goals and objectives of the Dolphin Wahoo FMP and provide guidance to staff. The Committee will also review Amendment 10 to the Dolphin Wahoo FMP. Draft Amendment 10 currently includes actions to revise annual catch limits, sector allocations, and accountability measures, and options to reduce the vessel limit for dolphin. The amendment would also remove Operator Card requirements; modify gear, bait, and training requirements in the commercial longline fishery for dolphin and wahoo to align with Highly Migratory Species requirements; and other measures. The Committee will review actions in the draft amendment and consider approving for public scoping.
4. The Committee will review draft Amendment 12 with measures to add bullet mackerel and frigate mackerel as Ecosystem Component species to the Dolphin Wahoo FMP, consider appropriate regulatory actions, and provide guidance to staff.

Executive Finance Committee—Wednesday, September 18, 2019, 3:45 p.m. until 4 p.m. and Thursday, September 19, 2019, 3:30 p.m. Until 5 p.m.

1. The Committee will consider ranking of amendments for the Council's work schedule and provide guidance to staff.
2. The Committee will receive a report from the November 2019 meeting of the Council Coordination Committee (CCC) and an update on the Magnuson-Stevens Reauthorization, discuss and provide guidance to staff.
3. The Committee will receive an update on the status of the Calendar Year (CY) 2019 Budget, discuss and take action as necessary.
4. The Committee will review a prioritization schedule for work on amendments, discuss and provide guidance to staff.

Formal Public Comment, Wednesday, September 18, 2019, 4 p.m.—Public comment will be accepted on items on the Council meeting agenda scheduled to be approved for Secretarial Review: Snapper Grouper Regulatory

Amendment 29 (Best Practices and Powerheads) and the Wreckfish ITQ Review document. Public comment will also be accepted on items for scoping/public hearings and all other agenda items. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

Habitat Protection and Ecosystem-Based Management Committee, Thursday, September 19, 2019, 8:30 a.m. Until 10 a.m.

1. The Committee will receive an overview of Council actions relevant to Habitats and Ecosystems, review the Habitat Protection and Ecosystem-Based Management Advisory Panel Report, discuss and take action as needed.

Joint Habitat Protection and Ecosystem-Based Management Committee, Shrimp Committee, and Golden Crab Committee Meeting, Thursday, September 19, 2019, 10 a.m. Until 12 p.m.

1. The Committees will review a comprehensive amendment (Coral Amendment 10/Shrimp Amendment 11/Golden Crab Amendment 10) addressing access to managed areas, transit provisions, and options for vessel monitoring systems (VMS) for the golden crab fishery, discuss and consider approval for public scoping.

Mackerel Cobia Committee, Thursday, September 19, 2019, 1:30 p.m. Until 3:30 p.m.

1. The Committee will receive an update on the status of commercial catches versus ACLs and the status of amendments under formal Secretarial review.

2. The Committee will receive an overview of Framework Amendment 8 to the Coastal Migratory Pelagic FMP addressing king mackerel commercial trip limits in Season 2 in the Atlantic Southern Zone, review analyses, select preferred alternatives, and consider approving for public hearings.

3. The Committee will review a white paper to address Spanish mackerel closures in the Atlantic Northern Zone and other management measures, discuss possible port meetings for the king and Spanish mackerel fisheries, and take action as necessary.

4. The Committee will review a Gulf of Mexico Fishery Management Council Framework action to modify federal for-hire trip limits in the Gulf reef fish and Coastal Migratory Pealgics fisheries, discuss and take action as necessary.

5. The Committee will also discuss agenda items for the upcoming Mackerel Cobia Advisory Panel meeting, provide direction to staff, and take action as necessary.

Council Session: Friday, September 20, 2019, 8:30 a.m. Until 1 p.m. (Partially Closed Session if Needed)

The Full Council will begin with the Call to Order, adoption of the agenda, approval of minutes, and presentations for the 2018 Law Enforcement of the Year award and Council staff recognition.

The Council will receive a Legal Briefing on Litigation from NOAA General Counsel (if needed) during Closed Session. The Council will receive staff reports including the Executive Director's Report, and updates on the MyFishCount pilot project and the Council's Citizen Science Program.

Updates will be provided by NOAA Fisheries including a report on the status of commercial catches versus ACLs for species not covered during an earlier committee meeting, the Southeast Geographic Strategic Plan, data-related reports (for-hire amendment and bycatch), update on the status of the of the Commercial Electronic Logbook Program, and the status of the Marine Recreational Information Program (MRIP) conversions for recreational fishing estimates. The Council will discuss and take action as necessary.

The Council will review any Exempted Fishing Permits received as necessary.

The Council will receive reports from the following committees: Snapper Grouper; Mackerel Cobia; Protected Resources; Dolphin Wahoo; Habitat Protection and Ecosystem-Based Management; Joint Habitat/Shrimp/Golden Crab; Executive Finance; and Personnel. The Council will take action as appropriate.

The Council will receive agency and liaison reports; and discuss other business and upcoming meetings and take action as necessary.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18459 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV037

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a one-day meeting of its Coral Scientific and Statistical Committee (SSC), Coral and Shrimp Advisory Panels (AP).

DATES: The meeting will convene on Monday, September 16, 2019, from 8:30 a.m. to 5 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Gulf Council office.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Natasha Mendez-Ferrer, Biologist, Gulf of Mexico Fishery Management Council; *natasha.mendez@gulfcouncil.org,* telephone: (813) 348–1630. The Council's website, *www.gulfcouncil.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and other materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Monday, September 16, 2019; 8:30 a.m.–5 p.m.

The meeting will begin with introduction of members, election of Coral Advisory Panel Chair and Vice Chair; and, adoption of agenda. The committees will approve the Joint Shrimp and Coral APs and Coral SSC minutes from the August 3–4, 2016 meeting; and, receive a summary of the Joint Standing and Coral SSC minutes from the January 9, 2018 meeting.

Council staff will review the scope of work; and NMFS will give an update on the Implementation Status of Coral 9. The committees will receive an update on Flower Garden Banks National Marine Sanctuary expansion; Florida Keys National Marine Sanctuary expansion, and implications for fisheries management; Stony Coral Tissue Loss Disease; and, Coral Reef Conservation Program Update. The committees will discuss any Other Business items.

Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the listen-in access by visiting *www.gulfcouncil.org* and clicking on the SSC/AP meeting on the calendar. The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18460 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV043

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ecosystem and Ocean Planning (EOP) Committee will hold a meeting.

DATES: The meeting will be held on Thursday, September 19, 2019, from 10 a.m. to 5 p.m. and Friday, September 20, 2019, from 8:30 a.m. to 12 noon. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place at the Hyatt Place Inner Harbor, 511 South Central Avenue, Baltimore, MD 21202; telephone: (410) 558–1840.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the EOP Committee to review and provide feedback on a draft summer flounder conceptual model, data availability and draft management questions that could be explored with the conceptual model. This process and review is part of the Council's Ecosystem Approach to Fisheries Management decision framework in which the Council agreed to pilot the development of a summer flounder conceptual model that will consider the high priority risk factors affecting summer flounder and its fisheries. In addition, the Committee may take up any other business as necessary.

A detailed agenda and any pertinent background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18465 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG908

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the King Pile Markers Project on the Columbia River

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from U.S. Army Corps of Engineers, Portland District (Corps) for authorization to take marine mammals incidental to the King Pile Markers Project on the Columbia River in Washington and Oregon Pursuant to the Marine Mammal Protection Act (MMPA). NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 26, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or

received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On February 11, 2019, NMFS received a request from the Corps for an IHA to take marine mammals incidental to pile driving associated with the replacement of king pile markers at numerous dike locations in the lower Columbia River system. The king pile markers are located in Oregon and Washington between river miles (RM) 41 and 137. The application was deemed adequate and complete on August 2, 2019. The Corps' request is for take of small numbers of harbor seal (*Phoca viutlina*), Steller sea lion (*Eumetopias jubatus*), and California sea lion (*Zalophus californianus*) that may occur in the vicinity of the project by Level B harassment. Neither the Corps nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The Corps is proposing to replace up to 68 king pile markers at 68 pile dike sites along the lower Columbia River between river miles (RM) 41 and 137 (see Figure 1). There are a total of 256 pile dikes, in the existing dike system. The king piles that require replacement are not functioning as intended. They were designed to aid navigation by helping mariners avoid pile dikes during high water. Many exiting king piles are either missing completely, damaged, or degraded to a point where they no longer provide a visual identifier. This lack of visibility poses a safety concern to both recreational and commercial boaters on the river. Replacement of the king piles will improve visibility of pile dikes and improve safety for Columbia River traffic. Impact and vibratory pile installation would introduce underwater sounds at levels that may result in take, by Level B harassment, of marine mammals in the lower Columbia River. Construction activities are expected to last 61 days.

Dates and Duration

Pile installation would be done during the 2019 in-water work window of October 1, 2019 to November 30, 2019. Impact driving will only take place in November, as per NMFS 2012 SLOPES IV programmatic biological opinion. Since the in-water work window is approximately 61 days and pile installation activity could potentially occur on each day of that window, it is estimated that the project could require up to 61 days. Pile installation will be conducted during standard daylight working hours. Up to one hour of impact driving and 30 minutes of vibratory driving could occur at each pile dike location per day.

Specific Geographic Region

Pile dikes are located in both Oregon and Washington on the Columbia River between RM 41 and 137. The project area is dominated by freshwater inputs from the Columbia and Willamette rivers. The Mouth of the Columbia River designated at RM 0 while the Bonneville Dam is located at RM 146. The existing depth (relative to Columbia River low water datum) at the locations of missing king pile markers varies from less than 10 ft. to greater than 30 ft., but is generally in the 20–30 foot range, possibly indicating scour protection rock thicknesses of up to 10 feet.

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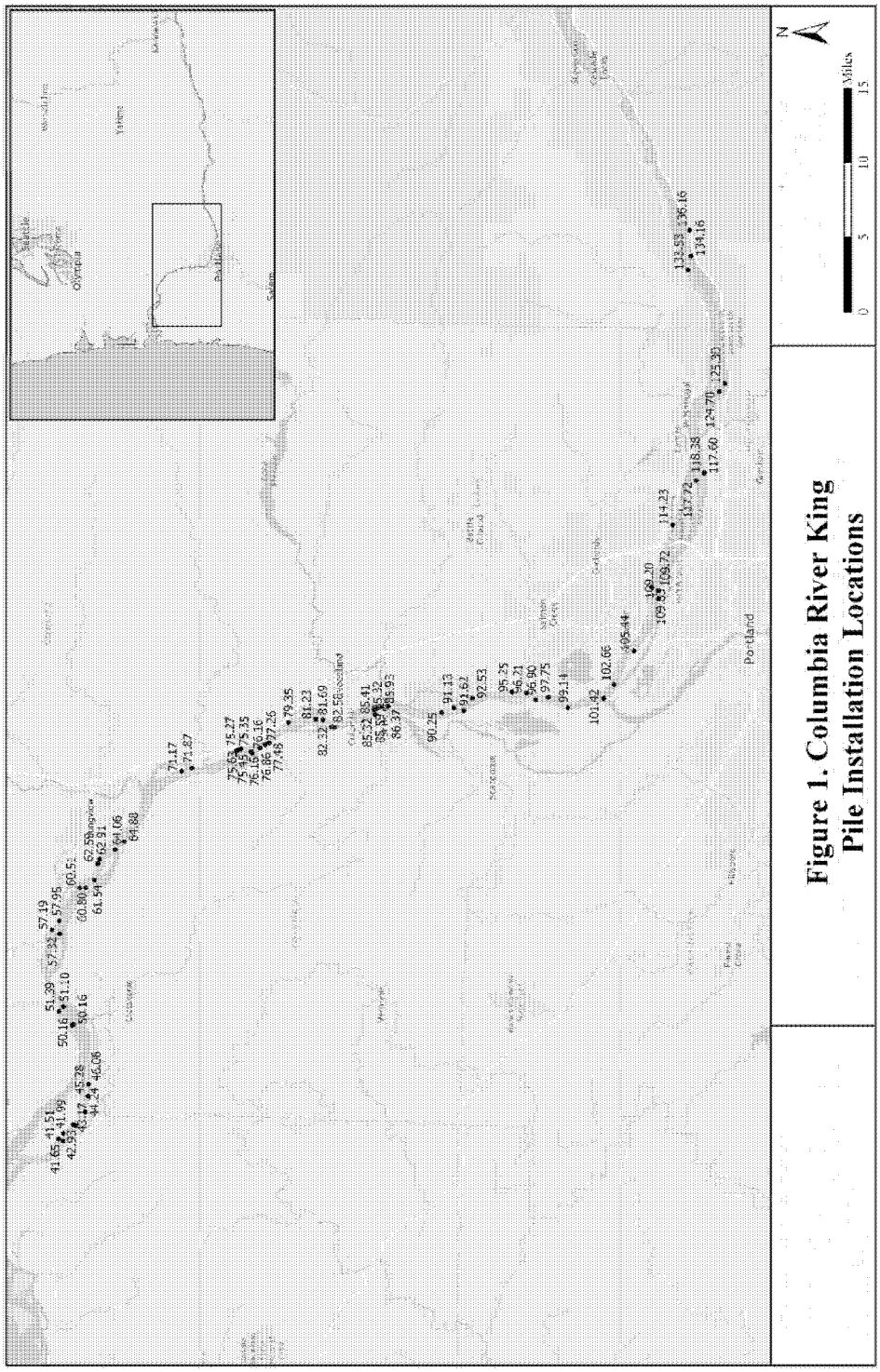

Figure 1. Columbia River King Pile Installation Locations

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Detailed Description of Specific Activity

King pile markers consist of one or more tall piles (up to about 20 feet above the Columbia River mean low water (MLW) datum) marking the end of a pile dike for navigational safety. King piles were originally constructed as part of a cluster of piles called an outer dolphin. Columbia River pile dikes are permeable groins extending into the river and consist of two or three rows of vertical untreated timber pilings driven in staggered rows of 5-foot centers alternately placed on each side of horizontal spreader piles and fastened together. Rock placed at the base of the piles and at the shore connection help protect against scour.

Construction will consist of driving new replacement piles, and adding scour protection rock around new piles as needed. Each replacement king pile marker will consist of a single steel pipe pile of up to 24-inch diameter. Piles will be driven up to 30–35 feet of embedment. If piles cannot be driven through the existing scour protection rock, the marker will be offset. Scour protection rock (less than 25 cubic yards) may be placed around the base of any offset piles. The total estimated

quantity of piles needed for this project is 68 piles.

Barges will transport all materials (new piles, and scour protection rock) to and from the site and serve as staging platforms during construction. Barges will be moved by tugboats, then spudded or anchored into position.

At each king pile marker, piles will be installed using vibratory drivers (*e.g.,* APE Model 200 vibratory driver or equivalent) and/or impact hammers (D–46–42 diesel impact hammer or equivalent) operated from a barge-mounted crane. Vibratory driving is the preferred method; however, impact driving may be necessary if piles cannot be driven to the necessary embedment depth using the vibratory method. Under the Standard Local Operating Procedures for Endangered Species (SLOPES) IV biological opinion (NMFS 2012a), impact driving in the Columbia River is only allowed during the month of November, and must use an acoustic attenuation device (*e.g.,* a bubble curtain). This programmatic biological opinion examined the effects of implementing standard local operating procedures for Corps activities involving inwater or over-water structures (including pile driving, access management, and minor discharges) in Oregon and the south shore of the Columbia River and its tributaries. The measures described above are required to protect 17 fish species, including multiple salmon species (*Oncorhynchus sp*) as well as Southern green sturgeon (*Acipenser medirostris*) and eulachon (*Thaleichthys pacificus*). Note that the programmatic biological opinion does not apply to this proposed IHA, but rather to the Corps' pile driving activities. Piles are generally installed by a rig that supports the pile leads, raises the pile, and operates a driver. Driving shoes may be used.

It is estimated that each pile will take up to one hour to install using vibratory methods with 30 minutes of that time being actual driving of the pile. Whether impact or vibratory methods are employed, one pile will be installed per pile dike location per day. Depending on weather and other logistical constraints, piles will be installed at up to 9 locations per day. For piles driven with an impact hammer, there are an estimated 550 strikes per pile requiring up to one hour, assuming a hammer energy rating of 55,000 ft-lbs and piles being driven through a combination of sand and rock (Bainbridge Island Ferry Terminal, WSDOT 2018a, 2018b). Actual pile driving rates will vary, and a typical day will likely involve fewer locations and fewer strikes.

The contractor may use multiple pile-driving and material barges to facilitate completion of work within the in-water work window. However, concurrent work at two or more locations are unlikely to be in close proximity to each other.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find*-species).

Table 1 lists all marine mammal species with expected potential for occurrence in the lower Columbia River and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's 2018 U.S. Pacific Marine Mammal SARs (Carretta *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2019).

TABLE 1—MARINE MAMMAL SPECIES LIKELY TO BE IN LOWER COLUMBIA RIVER NEAR KING PILE MARKER SITES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S. Stock	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	-, -, N	41,638 (See SAR, 41,638, 2015).	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Oregon and Washington Coast	-, -, N	UNK (UNK, UNK, 1999)	UND	10.6

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the proposed survey areas are included in Table 1. All three species (with three managed stocks) described below co-occur temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

California Sea Lion

California sea lions are found along the west coast from the southern tip of Baja California to southeast Alaska. They breed mainly on offshore islands from Southern California's Channel Islands south to Mexico. Non-breeding males often roam north in spring foraging for food. Since the mid-1980s, increasing numbers of California sea lions have been documented feeding on fish along the Washington coast and—more recently—in the Columbia River as far upstream as Bonneville Dam, 145 mi (233 km) from the river mouth. Large numbers of California sea lions also use the South Jetty at the Mouth of Columbia River for hauling out (Jeffries 2000). The jetty is located approximately 40 miles downriver from the nearest king pile that would be replaced.

Oregon Department of Fish and Wildlife survey information (2007 and 2014) indicates that California sea lions are relatively less prevalent in the Pacific Northwest during June and July, though in the months just before and after their absence there can be several hundred using the South Jetty. More frequent Washington Department of Fish and Wildlife surveys (2014) indicate greater numbers in the summer, and use remains concentrated to fall and winter months. Nearly all California sea lions in the Pacific Northwest are sub-adult and adult males (females and young generally stay in California).

Although coast wide the population has grown, the numbers seen in the river and upstream at Bonneville dam during both the spring and fall/winter observation periods have decreased since 2003. This may be in due to the California sea lion management activities that have been implemented to reduce their predation rates on salmon and steelhead. These activities include hazing of all California sea lions near the dam and fish ladders, as well as the lethal removal of the individuals with the highest predation rates (Tidwell *et al.* 2019).

Steller Sea Lion

The range of the Steller sea lion includes the North Pacific Ocean rim from California to northern Japan. Steller sea lions forage in nearshore and pelagic waters where they are opportunistic predators. Steller sea lion populations that primarily occur east of 144° W (Cape Suckling, Alaska) comprise the Eastern Distinct Population Segment (DPS) (Carretta et al. 2019). Stellar sea lions (*Eumetopias jubatus*) are currently the most common marine mammal observed in the proposed action area. They are frequently observed between the river's mouth (RM 0) and the Bonneville Dam tailrace (RM 146). Large numbers of Steller sea lions use the South Jetty for hauling out (Jeffries 2000) and are present, in varying abundances, all year.

During an August–December monitoring period the number of individuals observed at Bonneville Dam has been increasing for the past decade (Tidwell *et al.* 2019). The Bonneville dam observation area is approximately 10 miles upstream of the nearest king pile that is proposed for replacement under this IHA.

Harbor Seal

Harbor seals range from Baja California, north along the western coasts of the United States, British Columbia and southeast Alaska, west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands, and north in the Bering Sea to Cape Newenham and the Pribilof Islands. They are one of the most abundant pinnipeds in Oregon and can typically be found in coastal marine and estuarine waters of the Oregon coast throughout the year. On land, they can be found on offshore rocks and islands, along shore, and on exposed flats in the estuary (Harvey 1987). They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with tides, weather, season, food availability, and reproduction. Harbor seals do not make extensive pelagic migrations (Carretta *et al.* 2019). Major haul-out sites with more than 500 individuals have been noted in the Columbia River and are downstream of Tongue Point, about 25 miles downstream of the nearest king pile driving location proposed for this project (Jeffries 2000). They are uncommon upstream near the Bonneville dam in all seasons.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.

TABLE 2—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Three pinniped species (two otariid and one phocid) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving. The effects of underwater noise from the Corps' proposed activities have the potential to result in Level A and Level B harassment of marine mammals in the vicinity of the project area.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound

level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.,* Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Acoustic Effects on Marine Mammals

We previously provided general background information on marine mammal hearing (see ''Description of Marine Mammals in the Area of the Specified Activity''). Here, we discuss the potential effects of sound on marine mammals.

Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the

masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result in such effects (see below for further discussion). Potential effects from explosive impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to

stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other

critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009;). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must

be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Airborne noise would primarily be an issue for pinnipeds that are swimming near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Potential Effects of the Corps' Proposed Activity—As described previously (see ''Description of Active Acoustic Sound Sources''), the Corps proposes to conduct impact and vibratory driving. The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. With both types, it is likely that the pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives; moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior; avoidance of areas where sound sources are located; and/or flight responses.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are extremely unlikely in this area (*i.e.,* relatively shallow waters in an area with considerable vessel traffic).

Whether impact or vibratory driving, sound sources would be active for relatively short durations, with relation to potential for masking. The frequencies output by pile driving activity are lower than those used by most species expected to be regularly present for communication or foraging. We expect insignificant impacts from masking, and any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Marine Mammal Habitat

The proposed activities may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the waters in the vicinity of the multiple king pile marker sites. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near where the piles are installed. Impacts to the immediate substrate during installation of piles would be minor since piles would be driven through existing enrockment structures. This could result in limited, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation

(*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events at each king pile marker location and the relatively small areas being affected.

In summary, given the short duration of sound (up to 90 minutes) associated with individual pile driving events and the small area being affected relative to available nearby habitat, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species or other prey. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

The area impacted by the project is relatively small compared to the available habitat in the lower Columbia River and Columbia River estuary. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the Corps' construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Furthermore, impact driving will only take place in November, as per the 2012 SLOPES IV programmatic biological opinion to protect 17 fish species, including multiple salmon species. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* use of bubble curtains during impact driving, establishment of shutdown zones—discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-

driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

The Corps' proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Corp's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) source.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

Where:

B = transmission loss coefficient (assumed to be 15)

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20 * log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10 * log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. Pile driving may be done with either vibratory or impact hammer, with vibratory driving being the preferred method. Due to anticipated enrockment surrounding existing piles, however, use of impact hammers may be required.

Estimated in-water sound levels anticipated from vibratory installation and impact hammer installation of steel pipe piles are summarized in Table 4. Sound pressure levels for impact driving of 24-in steel piles were taken from Caltrans (2015). The SLs in the table below include a 7 dB reduction for impact driving due to attenuation associated with the use of bubble curtains. Vibratory driving source levels for 24-in steel piles came from the United States Navy (2015). Due to the short operating window (61 days), and concerns about possible delays due to bad weather, the Corps does not propose to use bubble curtains during vibratory driving. This should expedite pile installation at king pile locations where use of vibratory hammers is employed.

TABLE 4—ESTIMATED UNDERWATER SOURCE LEVELS ASSOCIATED WITH VIBRATORY PILE DRIVING AND IMPACT HAMMER PILE DRIVING

Pile type	Sound Pressure Level (SPL) (single strike)		
24-Inch Steel Pipe Piles w/impact hammer (attenuated) [1]	200 dB_{PEAK}	187 dB_{RMS}	171 dB_{SEL}.
24-Inch Steel Pipe Piles w/vibratory (unattenuated) [2]	Not Available	161 dB_{RMS}	Not Available.

[1] From Caltrans (2015) Acoustic data from CalTrans 2015 Table I.2–1. Summary of Near-Source (10-Meter) Unattenuated Sound Pressure Levels for In-Water Pile Driving Using an Impact Hammer: 0.61-meter (24-inch) steel pipe pile in water ~15 meters deep, w/7dB reduction for use of attenuation (as per NMFS 2019 pers. Comm).

[2] From United States Navy. 2015. Proxy source sound levels and potential bubble curtain attenuation for acoustic modeling of nearshore marine pile driving at Navy installations in Puget Sound. Prepared by Michael Slater, Naval Surface Warfare Center, Carderock Division, and Sharon Rainsberry, Naval Facilities Engineering Command Northwest. Revised January 2015. Table 2–2.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting Level A harassment isopleths are reported below in Tables 5 and 6 respectively. Note that while up to 9 piles could be installed in a single day, they would be driven at different locations and the ensonified areas associated with each location would not overlap. For the purpose of calculating PTS isopleths using the User Spreadsheet, it is assumed that a single pile would be driven per day at a single location (*i.e.,* the zones for each pile are calculated independently) since there will be no overlap of disturbance zones from adjacent king pile installation sites. The Level B harassment isopleths were calculated using the practical spreading loss model. Underwater noise will fall below the behavioral effects threshold of 160 dB for impact driving and 120 dB rms for vibratory driving at the distances shown in Table 6.

TABLE 5—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS

Inputs	24-in Steel impact installation	24-in Steel vibratory installation
Spreadsheet Tab Used	(E.1) Impact Pile Driving	(A.1) Vibratory Pile Driving.
Source Level (Single Strike/shot SEL)	171 dB SEL/200 dB Peak	161 dB RMS.
Weighting Factor Adjustment (kHz)	2	2.5.
Number of strikes per pile	550.	
Number of piles per day	1	1.
Duration to install single pile (minutes)	60	30.
Propagation (xLogR)	15	15.
Distance of source level measurement (meters) +	10	10.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Noise generation type	Level A harassment		Level B harassment
	Permanent Threshold Shift (PTS) isopleth (meters)		Isopleth (meters)
	Phocid pinniped	Otariid pinniped	All groups
24″ Steel Pipe Impact attenuated	56.9	4.1	631
24″ Steel Pipe Vibratory unattenuated	2.6	0.2	5,412

The Corps and NMFS do not anticipate take of marine mammals by Level A harassment due to the relatively small PTS isopleths as well as required shutdown if an animal approaches the zone. The Level B harassment zone area for each king pile site will differ since the landforms and river morphology are unique to each king pile location.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Pinnipeds are typically concentrated at haul out sites (*e.g.,* the MCR South jetty) and feeding areas where there are concentrations of salmon (*e.g.,* Bonneville Dam). Individual animals that occur near king pile locations are likely to be in transit between these two prominent sites. Pinnipeds that travel to Bonneville Dam consistently forage in all three of the dam's tailraces. A tailrace is the flume, or water channel leading away from the dam. Pinniped presence at the dam during the spring

months has been recorded since 2002 and during fall/winter months starting in 2011 to assess the impact of predation on adult salmonids and other fish (Tidwell *et al.* 2019).

Estimated take was calculated using the maximum daily number of individuals observed at Bonneville dam (Tidwell *et al.* 2019), multiplied by the total number of work days (61). The maximum daily number of animals observed at the dam between August 15 and December 31 was used for both California sea lions (3 in 2015 and 2017) and Steller sea lions (56 in 2016). No harbor seals were observed during the fall/winter sampling period. However, only one of the three tailraces was monitored during the fall/winter months and only when sea lion abundance was ≥20 animals. Therefore, NMFS multiplied the number of observed California and Steller sea lions by three to account for potential animals at all of the tailraces. Since there were no harbor seals observed during the fall/winter period, NMFS used the maximum daily observation from the spring observation period (3 in 2006) during which all three tailraces were monitored. These estimates assume that if an animal transits the reach of river where driving takes place it will pass through the Level B isopleth since in most cases the radius would be larger than the width of the river in most cases. Table 7 depicts the stocks NMFS proposes to authorize for take, the numbers proposed for authorization, and the percentage of the stock taken.

TABLE 7—LEVEL B HARASSMENT TAKE ESTIMATES FOR THE KING PILE MARKER PROJECT

Species	Level B take	Stock abundance	Percentage of stock taken
California Sea Lion	549	296,750	0.2
Stellar Sea Lion	10,248	41,638	24.6
Harbor Seal	183	*24,732	0.7

*There is no current estimate of abundance available for this stock since most recent abundance estimate is >8 years old. Abundance value provided represents best available information from 1999.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, the Corps must employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation will shut down immediately when the animals are sighted;
- If take by Level B harassment reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take of them.

Establishment of Shutdown Zones—For all pile driving activities, the Corps establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the type of driving activity and by marine mammal hearing group. Shutdown zones during impact and vibratory driving will be 10 m for all species, with the exception of a 60-m shutdown zone for harbor seals during impact driving activities. In all cases, the proposed shutdown zones are larger than the calculated Level A harassment isopleths shown in Table 6. The placement of protected species observers (PSOs) during all pile driving activities (described in detail in the Proposed Monitoring and Reporting Section) will ensure that the entirety of all shutdown zones are visible during pile installation.

Establishment of Monitoring Zones for Level B Harassment—The Corps will establish monitoring zones, based on the Level B harassment isopleths which are

areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. In the unlikely event that a cetacean enters the Level B harassment zones work will stop immediately until the animal either departs the zone or is undetected for 15 minutes. Distances to the Level B harassment zones are depicted in Table 6. In addition, the Corps will establish minimum allowable work distances between adjacent work platforms, based on monitoring zone isopleths, to ensure that there is no overlap of behavioral harassment zones.

Sound Attenuation—Bubble curtains will be used during any impact pile driving of piles located in water greater than 2 ft. in depth. The bubble curtain will be operated in a manner consistent with the following performance standards:

a. The bubble curtain will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column;

b. The lowest bubble ring will be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact; and

c. Air flow to the bubblers must be balanced around the circumference of the pile.

Soft Start—The use of a soft-start procedure are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start is not required during vibratory pile driving activities. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. If a marine mammal is present within the shutdown zone, soft start will be delayed until the animal is observed leaving the shutdown zone. Soft start will begin only after the PSO has determined, through sighting, that the animal has moved outside the shutdown zone or 15 minutes have passed without being seen in the zone. If a marine mammal is present in the Level B harassment zone, soft start may begin and a Level B take will be recorded for authorized species. Soft start up may occur whether animals enter the Level B zone from the shutdown zone or from outside the monitoring area.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and marine mammals are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, pile driving activities may begin and take by Level B will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

There will be at least one PSO employed at all king pile installation locations during all pile driving activities. PSO will not perform duties

for more than 12 hours in a 24-hour period. The PSO would be positioned close to pile driving activities at the best practical vantage point.

As part of monitoring, PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, PSOs will monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Independent observers (*i.e.,* not construction personnel);
- Observers must have their CVs/resumes submitted to and approved by NMFS;
- Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute education or training for experience;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- At least one observer must have prior experience working as an observer;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile driving activities. This reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations;
- An estimate of total take based on proportion of the monitoring zone that was observed; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, that phase's draft final report will constitute the final report. If comments are received, a final report for the given phase addressing NMFS comments must be submitted within 30 days after receipt of comments. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHAs (if issued), such as an injury, serious injury or mortality, the Corps would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the Corps to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Corps would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the Corps discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), the Corps would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Corps to determine whether modifications in the activities are appropriate.

In the event that the Corps discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in these IHAs (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Corps would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, within 24 hours of the discovery. The Corps would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to

considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 7, given that NMFS expects the anticipated effects of the proposed pile driving to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of the Corps' proposed activity. As stated in the proposed mitigation section, shutdown zones will be established and monitored that equal or exceed calculated Level A harassment isopleths during all pile driving activities.

Behavioral responses of marine mammals to pile driving during the King Pile Marker Project are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities (less than 90 minutes of combined daily impact and vibratory driving at 68 separate locations over 61 days, any harassment would be likely be intermittent and temporary.

In addition, for all species there are no known biologically important areas (BIAs) within the lower Columbia River and no ESA-designated marine mammal critical habitat. The lower Columbia River represents a very small portion of the total habitat available to the pinniped species for which NMFS is proposing to authorize take. More generally, there are no known calving or rookery grounds within the project area, the project area represents a small portion of available foraging habitat, and the duration of noise-producing activities relatively is short, meaning impacts on marine mammal feeding for all species should be minimal.

Any impacts on marine mammal prey that would occur during the Corps' proposed activity would have at most short-terms effects on foraging of individual marine mammals while transiting between the South Jetty at the Mouth of the Columbia River and Bonneville Dam located 146 miles upstream. Better feeding opportunities exist at these two locations which is why pinnipeds tend to congregate in these areas. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial, and these insubstantial effects would therefore be unlikely to cause substantial effects on individual marine mammals or the populations of marine mammals as a whole.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The Corps would implement mitigation measures including bubble curtains and soft-starts during impact pile driving as well as shutdown zones that exceed Level A harassment zones for authorized species, such that Level A harassment is neither anticipated nor authorized;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- There are no BIAs or other known areas of particular biological importance to any of the affected stocks impacted by the activity within the Columbia River estuary or lower Columbia River;
- The project area represents a very small portion of the available foraging area for all marine mammal species and anticipated habitat impacts are minimal; and

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 7 in the *Marine Mammal Occurrence and Take Calculation and Estimation* section presents the number of animals that could be exposed to received noise levels that may result in take by Level B harassment from the Corps' proposed activities. Our analysis shows that less than 25 percent of the Steller sea lion stock could be taken. Less than one percent of California sea lion and harbor seal stocks are expected to be taken. Given that numbers for Steller sea lions were derived from limited observation at Bonneville Dam, it is likely that many of these takes will be repeated takes of the same animals over multiple days. As such, the take estimate serves as a good estimate of instances of take, but is likely an overestimate of individuals taken, so actual percentage of stocks taken would be even lower. We also emphasize the fact that the lower Columbia River represents a very small portion of the stock's large range, which extends from southeast Alaska to southern California. It is unlikely that one quarter of the entire stock would travel in excess of 137 miles upstream to forage at Bonneville Dam on the Columbia River.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Corps for conducting pile driving activities on the Columbia River between September 15 and November 30, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed [action]. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: August 20, 2019.

Cathryn E. Tortorici,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–18351 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV041

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Crab Plan Team will meet September 16, 2019 through September 20, 2019.

DATES: The meetings will be held on Monday, September 16, 2019, from 1 p.m. to 4 p.m.; and Tuesday, September 17, 2019 through Thursday, September 19, 2019, from 9 a.m. to 5 p.m.; and Friday, September 20, 2019, from 9 a.m. to 12:30 p.m., Pacific Standard Time.

ADDRESSES: The meetings will be held at the Alaska Fishery Science Center in the Traynor Room 2076, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Jim Armstrong, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, September 16, 2019

The Crab Plan Team will meet with the BSAI and GOA Groundfish Plan Teams to review and discuss issues of importance to all three Plan Teams, including but not limited to the Plan Team Handbook, ESP/Prioritization, PEEC workshop report, Social Science Plan Team report, Bering Sea FEP, ESR Climate Overview, and VAST.

The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/844* prior to the meeting, along with meeting materials.

Tuesday, September 17, 2019 Through Friday, September 20, 2019

The Crab Plan Team will review the final stock assessments for Bristol Bay red king crab, snow crab, St Matthew blue king crab, Tanner crab, and Pribilof Islands red king crab. Additionally, the Crab Plan Team will discuss survey results, fishery performance, St Matthew blue king crab rebuilding, snow and Tanner crab biology, and plans for their upcoming January 2020 meeting.

The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/845* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/845* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chairs.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18463 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV040

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Groundfish Plan Teams will meet September 16, 2019 through September 19, 2019.

DATES: The meetings will be held on Monday, September 16, 2019, from 1 p.m. to 4 p.m.; Tuesday, September 17, 2019, from 9 a.m. to 5 p.m.; Wednesday, September 18, 2019, from 9 a.m. to 5 p.m.; and Thursday, September 19, 2019, from 9 a.m. to 12 p.m., Pacific Standard Time.

ADDRESSES: The meetings will be held at the Alaska Fishery Science Center in the Traynor Room 2076, Room 2079, and the Observer Training Room 1055, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Steve MacLean or Sara Cleaver, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, September 16, 2019

The BSAI and GOA Groundfish Plan Teams will meet with the Crab Plan Team to review and discuss issues of importance to all three Plan Teams, including but not limited to the Plan Team Handbook, ESP/Prioritization, PEEC workshop report, Social Science Plan Team report, Bering Sea FEP, ESR Climate Overview, and VAST.

The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/844* prior to the meeting, along with meeting materials.

Tuesday, September 17, 2019 Through Thursday, September 19, 2019

The Plan Teams will review the preliminary stock assessments for Groundfish and receive reports including but not limited to 2019 Survey Estimates, research priorities, GOA and EBS survey, EBS/NBS Shelf trawl survey, longline survey, Observer EM, DMRs, Economic Stock assessment and Fishery Evaluation (SAFE), AFSC Genomics Activity Plan, Risk Table, and Marine Mammal updates.

The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/843* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/843* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chairs.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18462 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV042

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Southern Resident Killer Whale (SRKW) Workgroup (Workgroup), will hold a webinar, which is open to the public.

DATES: The webinar meeting will be held on Tuesday, September 24, 2019, from 9 a.m. until 2 p.m., Pacific Daylight Time. The webinar time is an estimate; the meeting will adjourn when business for the day is complete.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the webinar by visiting this link *https://www.gotomeeting.com/webinar* (click ''Join a Webinar'' in top right corner of page), (2) enter the Webinar ID: 275–554–115, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–631–992–3221 (not a toll-free number), (2) enter the attendee phone audio access code 190–414–976, and (3) enter the provided audio PIN after joining the webinar. You must enter this PIN for audio access. *Note:* We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 10, 8, 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps.*) You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the webinar will be to review and discuss the proceedings of the Pacific Council meeting in September in Boise, Idaho relative to SRKWs, discuss data needs, document development, work plans, and progress made on assigned tasks. The Workgroup may also discuss and prepare for future Workgroup and Pacific Council meetings. The Pacific Council's Salmon Advisory Subpanel will be invited to attend in order to provide additional input and comments on the Workgroup's draft Risk Assessment report as needed. This is a public meeting and not a public hearing. Public comments will be taken at the discretion of the Workgroup co-chairs as time allows.

The National Marine Fisheries Service (NMFS) reinitiated Endangered Species Act (ESA) consultation on the effect of Pacific Council-area ocean salmon fisheries on SRKW. The Pacific Council formed the Workgroup to reassess the

effects of Pacific Council-area ocean salmon fisheries on the Chinook salmon prey base of SRKW. The Workgroup has held multiple meetings since their inception. Materials presented during past Workgroup meetings may be found on the NMFS West Coast Regional website (*https://www.fisheries.noaa.gov/west-coast/southern-resident-killer-whales-and-fisheries-interaction-workgroup*). Agendas and meeting notices can be found on the Pacific Council's website at *https://www.pcouncil.org*.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18464 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV038

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a two day in-person meeting of its Standing, Reef Fish, Mackerel and Socioeconomic Scientific and Statistical Committees (SSC).

DATES: The meeting will begin at 8:30 a.m. on Tuesday, September 17, 2019 and adjourn by 5 p.m., EDT on Wednesday, September 18, 2019.

ADDRESSES: The meeting will be held at the Gulf Council's office; see address below.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, September 17, 2019; 8:30 a.m.–5 p.m.

The meeting will begin with Introductions, Adoption of Agenda, Scope of Work, Approval of Scientific and Statistical Committees (SSC) Minutes from the July 30–31, 2019 Standing, Reef Fish, Mackerel, and Socioeconomic SSC meeting; and, Selection of SSC representative to attend the October 21–24, 2019 Council meeting in Galveston, TX. The committees will review stock assessment for SEDAR 61—Gulf of Mexico Red Grouper; receive a presentation of model, results, and projections from the Southeast Fisheries Science Center (SEFSC); and, discuss Stock Status Determination, Overfishing Limits (OFL) and Acceptable Biological Catch (ABC) Recommendation. The committees will receive the SEDAR 61 Executive Summary from SEFSC and Council Staff; and, an update on the Itarget Model and Projections for Gulf Lane Snapper; discussion of variability in yield projections from stock assessments; review SEFSC Key Stocks Analysis; and, review of South Atlantic Council SSC recommendations for MRIP APAIS/FES Survey methods.

Wednesday, September 18, 2019; 8:30 a.m.–5 p.m.

The committees will review the White Paper on SEDAR Best Practices for use of Recreational Survey Data from SEFSC staff; discuss Council Research and Monitoring Priorities for 2020–24; review of Status Determination Criteria Amendment; and, the Gulf SEDAR Assessment Schedule. Council staff will review scope of work for Gray Snapper Operational Assessment; review the Terms of Reference and Participants for SEDAR 70: Gulf of Mexico Greater Amberjack and SEDAR 73: Gulf of Mexico Gag; hold a discussion on Allocation Review; and, review the National Standard 1 Technical Guidance for Designing, Evaluating, and Implementing Carry-over and Phase-in Provisions within ABC Control Rules; and, any other business items.

—Meeting Adjourns—

The meeting will be broadcast via webinar. You may register for listen-in access by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18457 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Program

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Public meeting; opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA),

National Ocean Service, Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Commonwealth of the Northern Mariana Islands Coastal Management Program.

DATES: *Commonwealth of the Northern Mariana Islands Coastal Management Program Evaluation:* The public meeting will be held on October 16, 2019, and written comments must be received on or before October 25, 2019.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on the coastal program NOAA intends to evaluate by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in Garapan, Saipan. For the specific location, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please submit written comments to Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management, 2234 South Hobson Avenue, Charleston, South Carolina 29405 or email comments to *Ralph.Cantral@noaa.gov.* Comments that the Office for Coastal Management receives are considered part of the public record and may be publicly accessible. Any personally identifiable information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management, NOS/NOAA, 2234 South Hobson Avenue Charleston, South Carolina 29405, by phone at (843) 740–1143 or email *Ralph.Cantral@noaa.gov.* Copies of the previous evaluation findings for the Commonwealth of the Northern Mariana Islands Coastal Management Program and 2016–2020 Assessment and Strategy may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: October 16, 2019.

Time: 5:00 p.m., local time.

Location: American Memorial Park Visitor's Center Theater, Micro Beach Road, Garapan, Saipan, CNMI 96950.

Written public comments must be received on or before October 25, 2019.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Keelin Kuipers,

Deputy, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–18448 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV036

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting via webinar.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a webinar of its Observer Policy Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Friday, September 13 at 9 a.m. Webinar registration URL information: *https://global.gotomeeting.com/join/873161605.* Call in information: +1 (646) 749–3112, Attendee Access Code: 873–161–605.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will review the draft National Marine Fisheries Service Procedural Directive and consider a response. Other business will be discussed if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18461 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Logbook Family of Forms.

OMB Control Number: 0648–0016.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 3,484.

Average Hours per Response: Annual fixed-cost reports, 45 minutes; Colombian fishery logbooks, 18 minutes; discard logbooks, 15 minutes; headboat, golden crab, reef fish-mackerel, economic cost per trip, wreckfish, and shrimp logbooks, 10 minutes; no-fishing responses for golden crab, reef fish-mackerel, charter vessels, wreckfish and Colombian fisheries, 2 minutes.

Burden Hours: 16,908.

Needs and Uses: Catch and effort data are needed for scientific analyses that support critical conservation and management decisions that are made by national and international fishery management agencies. In addition, biologists need data on the amount of fish, marine mammals, and sea turtles that are caught or interacted with. This family of forms also includes the collection of cost-earning information and discards reported by fishermen.

Affected Public: small business or other for-profit organizations; individuals or Households with federal fishing permits.

Frequency: per fishing trip.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–18434 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV039

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) will hold a public meeting.

DATES: The meeting will be held on Monday, September 16, 2019, from 1 p.m. to 5 p.m., and on Tuesday, September 17, 2019, from 8:30 a.m. to 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Hyatt Place Inner Harbor, 511 South Central Avenue, Baltimore, MD 21202; telephone: (410) 558–1840.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet to review the previously implemented 2020 commercial and recreational Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), and landings limits for summer flounder, and to recommend new 2020–2021 ACLs, ACTs, and landings limits for scup and black sea bass. The Monitoring Committee will also review the commercial management measures for all three species and may recommend changes for 2020 and beyond if necessary. For scup, the Monitoring Committee will review and provide feedback on an evaluation of commercial discards. Finally, the Monitoring Committee will begin to plan for the development of recreational measures for 2020 in preparation for their recreational measures meeting later this fall. Meeting materials will be posted to *http://www.mafmc.org/* prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526–5251 at least 5 days prior to the meeting date.

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18458 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV044

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Mackerel, Squid, and Butterfish (MSB) Committee will hold a meeting.

DATES: The meeting will be held on Thursday, September 12, 2019, beginning at 8:30 a.m. and concluding by 3:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection: *http://mafmc.adobeconnect.com/illex-com-2019/*. Telephone instructions are provided upon connecting, or the public can call direct: (800) 832–0736, Rm: *7833942#.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purposes of the meeting are to review and develop options for modifying access to the *Illex* squid fishery as well as for revisions to the MSB Plan Goals/Objectives.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–18466 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2019–0029]

Request for Comments on Patenting Artificial Intelligence Inventions

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is interested in gathering information on patent-related issues regarding artificial intelligence inventions for purposes of evaluating whether further examination guidance is needed to promote the reliability and predictability of patenting artificial intelligence inventions. To assist in gathering this information, the USPTO is publishing questions on artificial intelligence inventions to obtain written comments from the public. The questions are designed to cover a variety of topics from patent examination policy to whether new forms of intellectual property protection are needed.

DATES: Written comments must be received on or before October 11, 2019.

ADDRESSES: Written comments should be sent by email to *AIPartnership@uspto.gov.* Comments may also be submitted by postal mail addressed to the Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria VA 22313–1450. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email.

Because written comments and testimony will be made available for public inspection, information that a respondent does not desire to be made public, such as a phone number, should not be included in the testimony or written comments.

FOR FURTHER INFORMATION CONTACT: Office of the Under Secretary and Director of the USPTO, (571) 272–8600.

SUPPLEMENTARY INFORMATION: Artificial Intelligence (AI) is increasingly becoming important across a diverse spectrum of technologies and businesses. Because execution of AI invariably requires some form of computer implementation, many of the patentability issues relating to computer-implemented inventions (*e.g.,* software) are germane to discussions of AI inventions.[1] AI methods and systems vary in their technical implementation, but rely on a substantial level of development and training by inventors, developers, and system users.

The USPTO has been examining AI inventions for decades and has issued guidance in many areas that necessarily relate to AI inventions. Going forward, the USPTO would like to engage with the innovation community and experts in AI to determine whether further guidance is needed to promote the predictability and reliability of patenting such inventions and to ensure that appropriate patent protection incentives are in place to encourage further innovation in and around this critical area.

Issues for Comment: The USPTO seeks comments on patenting artificial intelligence inventions. The questions enumerated below are a preliminary guide to aid the USPTO in collecting relevant information to evaluate whether further guidance is needed and assist in the development of any such guidance with respect to patenting artificial intelligence inventions. The questions should not be taken as an indication that the USPTO has taken a position or is predisposed to any particular views. USPTO welcomes comments from the public on any issues that they believe are relevant to this topic, and is particularly interested in answers to the following questions:

1. Inventions that utilize AI, as well as inventions that are developed by AI, have commonly been referred to as ''AI inventions.'' What are elements of an AI invention? For example: The problem to be addressed (*e.g.,* application of AI); the structure of the database on which the AI will be trained and will act; the training of the algorithm on the data; the algorithm itself; the results of the AI invention through an automated process; the policies/weights to be applied to the data that affects the outcome of the results; and/or other elements.

2. What are the different ways that a natural person can contribute to conception of an AI invention and be eligible to be a named inventor? For example: Designing the algorithm and/or weighting adaptations; structuring the data on which the algorithm runs; running the AI algorithm on the data and obtaining the results.

3. Do current patent laws and regulations regarding inventorship need to be revised to take into account inventions where an entity or entities other than a natural person contributed to the conception of an invention?

4. Should an entity or entities other than a natural person, or company to which a natural person assigns an invention, be able to own a patent on the AI invention? For example: Should a company who trains the artificial intelligence process that creates the invention be able to be an owner?

5. Are there any patent eligibility considerations unique to AI inventions?

6. Are there any disclosure-related considerations unique to AI inventions? For example, under current practice, written description support for computer-implemented inventions generally require sufficient disclosure of an algorithm to perform a claimed function, such that a person of ordinary skill in the art can reasonably conclude that the inventor had possession of the claimed invention. Does there need to be a change in the level of detail an applicant must provide in order to comply with the written description requirement, particularly for deep-learning systems that may have a large number of hidden layers with weights that evolve during the learning/training process without human intervention or knowledge?

7. How can patent applications for AI inventions best comply with the enablement requirement, particularly given the degree of unpredictability of certain AI systems?

8. Does AI impact the level of a person of ordinary skill in the art? If so, how? For example: Should assessment of the level of ordinary skill in the art reflect the capability possessed by AI?

9. Are there any prior art considerations unique to AI inventions?

10. Are there any new forms of intellectual property protections that are needed for AI inventions, such as data protection?

11. Are there any other issues pertinent to patenting AI inventions that we should examine?

12. Are there any relevant policies or practices from other major patent agencies that may help inform USPTO's policies and practices regarding patenting of AI inventions?

Dated: August 21, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–18443 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–16–P

[1] For a discussion of the issues unique to software patents, *see* Request for Comments and Notice of Roundtable Events for Partnership for Enhancement of Quality of Software-Related Patents, 78 FR 292, 294 (Jan. 3, 2013) (reviewing unique challenges of software patents).

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2019–0030]

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Human Capital Management, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Anne T. Mendez at (571) 272–6173.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Laura A. Peter, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office

Frederick W. Steckler, Vice Chair, Chief Administrative Officer, United States Patent and Trademark Office

Andrew H. Hirshfeld, Commissioner for Patents, United States Patent and Trademark Office

Mary Boney Denison, Commissioner for Trademarks, United States Patent and Trademark Office

Sean M. Mildrew, Acting Chief Financial Officer, United States Patent and Trademark Office

Henry J. Holcombe, Chief Information Officer, United States Patent and Trademark Office

Sarah T. Harris, General Counsel, United States Patent and Trademark Office

Shira Perlmutter, Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office

Alternates

Meryl L. Hershkowitz, Deputy Commissioner for Trademark Operations, United States Patent and Trademark Office

Andrew I. Faile, Deputy Commissioner for Patent Operations, United States Patent and Trademark Office

Dated: August 15, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–18407 Filed 8–26–19; 8:45 am]

BILLING CODE 3510–19–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of the U.S. Army Science Board

AGENCY: Department of Defense.

ACTION: Amendment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the U.S. Army Science Board (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(d). The DoD is amending the Board's current charter, which was previously announced in the **Federal Register** on May 18, 2018 (83 FRN 23621), to add the ''Army Science Board Chief of Engineers' Environmental Advisory Board Subcommittee'' as a permanent subcommittee. As stated in the Board's new charter, the Army Science Board Chief of Engineers' Environmental Advisory Board Subcommittee shall consist of no more than 10 members who are eminent authorities in the fields of natural, social, and related sciences to focus on matters relating to U.S. Army Corps of Engineers' Military and Civil Works programs.

The Army Science Board Chief of Engineers' Environmental Advisory Board Subcommittee shall not work independently of the Board and shall report all of their advice and recommendations solely to the Board for its deliberation and discussion. The Army Science Board Chief of Engineers' Environmental Advisory Board Subcommittee has no authority to make decisions and recommendations, verbally or in writing, on behalf the Board. Furthermore, no subcommittee member can provide updates or report, verbally or in writing, directly to the DoD or to any Federal officer or employee.

Individual members of the Board, including its five subcommittees, shall be appointed according to DoD policy and procedures to serve a term of service of one-to-four years with annual renewals. Leadership appointments for the Board and its subcommittees shall be selected from among previously approved members of the Board or subcommittee, in question, for one-to-two years of service, with annual renewal, which shall not exceed the individual's Board or subcommittee appointment, as appropriate.

Members of the Board and its subcommittees who are not full-time or permanent part-time Federal officers or employees, or members of the Armed Forces will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Board members who are full-time or permanent part-time Federal officers or employees, or members of the Armed Forces will be appointed, pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All members of the Board and its subcommittees are appointed to provide advice on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Board's membership about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements should be submitted to the Board's Designated Federal Officer (DFO), who will ensure that the written statements are provided to the membership for consideration.

The Board's charter and contact information for the DFO can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Dated: August 22, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–18411 Filed 8–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0104]

Agency Information Collection Activities; Comment Request; Federal Perkins Loan Program Regulations and General Provisions Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 28, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0104. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins Loan Program Regulations and General Provisions Regulations.

OMB Control Number: 1845–0019.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11,616,710.

Total Estimated Number of Annual Burden Hours: 6,247,152.

Abstract: This request is for continued approval of the reporting and record-keeping requirements that are contained in the General Provisions regulations as well as the specific program regulations for the Federal Perkins Loan program, the Federal Work-Study program, and the Federal Supplemental Educational Opportunities Grant program. This purpose of this submission is to extend this collection for the next three year period. The information collection requirements are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Dated: August 22, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–18452 Filed 8–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–32–000]

Commission Information Collection Activities (FERC–725M); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725M (Mandatory Reliability Standards: Generator Requirements at the Transmission Interface) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due October 28, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–32–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725M (Mandatory Reliability Standards: Generator Requirements at the Transmission Interface).

OMB Control No.: 1902–0263.

Type of Request: Three-year extension of the FERC–725M with no updates to the current reporting requirements.

Abstract: On September 19, 2013, the Commission issued Order No. 785, Docket No. RM12–16–000, a Final Rule [1] approving modifications to four existing Reliability Standards submitted by the North American Electric Reliability Corporation (NERC), the Commission certified Electric Reliability Organization. Specifically, the Commission approved Reliability Standards FAC–001–1 (Facility Connection Requirements), FAC–003–3 (Transmission Vegetation Management), PRC–004–2.1a (Analysis and Mitigation of Transmission and Generation Protection System Misoperations), and PRC–005–1.1b (Transmission and Generation Protection System Maintenance and Testing).[2] The modifications improved reliability either by extending applicability of the Reliability Standard to certain generator interconnection facilities, or by clarifying that the existing Reliability Standard is and remains applicable to generator interconnection facilities.

On April 26, 2016, a Delegated Letter Order was issued, Docket No. RD16–4–000, approving proposed Reliability Standard FAC–003–4 (Transmission Vegetation Management). Reliability Standard FAC–003–4 reflected revisions to the current Minimum Vegetation Clearance Distances (MVCDs) in Reliability Standard FAC–003–3 based on additional testing regarding the appropriate gap factor to be used to calculate clearance distances for vegetation. NERC explained that Reliability Standard FAC–003–4 includes higher and more conservative MVCD values and, therefore, maintained that these revisions would ''enhance reliability and provide additional confidence by applying a more conservative approach to determining the vegetation clearing distances.''

In FERC–725M we are:

(1) Adjusting the burden in FAC–003–4 to reflect the latest number of applicable entities based on the NERC Compliance Registry as of July 26, 2019.

(2) Making a program change to administratively remove all one-time burden [3] that is being inadvertently counted in FERC–725M and FERC–725D.

Type of Respondents: Transmission Owner (TO); Generator Owner (GO); and Regional Entity (RE).

Estimate of Annual Burden.[4] The Commission estimates the annual public reporting burden and cost [5] for the information collectionas:

FERC–725M, MANDATORY RELIABILITY STANDARDS: GENERATOR REQUIREMENTS AT THE TRANSMISSION INTERFACE

	Number of respondents [6] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5)÷(1)
FAC–003–4 (Transmission Vegetation Management)						
Generator Owners, Regional Entities: Quarterly Reporting (Compliance 1.4).	101 [7]	4	404	0.25 hrs.; $17.00 ...	101 hrs.; 6,868.00	$68.00
Generator Owners: Annual Veg. inspect. Doc. (M6); Work Plan (M7); Evidence of Mgt. of Veg. (M1 & M2); Confirmed Veg. Condition (M4); & Corrective Action (M5).	95	1	95	2 hrs.; $136.00	190 hrs.; 12,920.00	136.00
Generator Owners, Transmission Owners: Record Retention (Compliance 1.2).	423	1	423	1 hr.; $68.00	423 hrs.; 28,764.00	68.00
Total	.....	.....	922	.....	714 hrs.: $48,552.00	$272.00

[1] *Generator Requirements at the Transmission Interface,* 144 FERC ¶ 61,221 (2013).

[2] The burden is included in information collection FERC–725M.

The burdens related to previous versions of Reliability Standards mentioned in the Final Rule: FAC–001–0 (Facility Connection Requirements); FAC–003–2 (Transmission Vegetation Management); PRC–004–2a (Analysis and Mitigation of Transmission and Generation Protection System Misoperations); and PRC–005–1b (Transmission and Generation Protection System Maintenance and Testing) are included in FERC–725A (Mandatory Reliability Standards for the Bulk-Power System, OMB Control No. 1902–0244).

The Final Rule states the modifications included in PRC–004–2.1a and PRC–005–1.1b are clarifications of existing requirements, do not extend those existing requirements to any new entity or to additional facilities, and do not affect the existing burden related to those standards.

[3] One-time burden is typically performed in the first year of implementation. All burden associated with FAC–001–3 in this collection was removed in 2015. The burden in FAC–001–3 was transferred in 2015 to FERC–725D (OMB Control Number 1902–0247). *See* the November 6, 2014 Delegated Letter Order, Docket No. RD14–12–000, approving Reliability Standard FAC–001–2 and Order No. 836, *Balancing Authority Control, Inadvertent Interchange, and Facility Interconnection Reliability Standards,* 160 FERC 61,070 (2017), approving Reliability Standard FAC–001–3.

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[5] The estimated hourly cost (salary plus benefits) are based on the figures for May 2018 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and updated March 2019 for benefits information (at *http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

—Manager (code 11–0000), $95.24

—Information and Records Clerks (code 43–4199), $40.84

—Electrical Engineer (code 17–2071), $68.17

The average hourly burden cost for this collection is $68.08 [($95.24 + $40.84 + $68.17)/3 = $68.08)].and is rounded to $68.00 an hour.

[6] According to the NERC Compliance Registry as of July 26, 2019, there are 946 generator owners and 328 transmission owners registered in North America. We estimate that approximately 10 percent (or 95) of these generator owners have interconnection facilities that are applicable to the standard.

[7] The estimated number of respondents (101) includes 95 generator owners and 6 Regional Entities.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–18428 Filed 8–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–475–000]

Notice of Schedule for Environmental Review of the Gulfstream Natural Gas System, L.L.C. Phase VI Expansion Project

On June 3, 2019, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed an application in Docket No. CP19–475–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(b) and 7(c) of the Natural Gas Act to abandon, construct, and operate certain natural gas pipeline facilities in Alabama and Florida. The proposed project is known as the Phase VI Expansion Project (Project). The Project would add an additional 78,000 dekatherms per day of mainline capacity to an existing power plant in Manatee County, Florida.

On June 17, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—January 16, 2020

90-day Federal Authorization Decision Deadline—April 15, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Gulfstream proposes to install one 16,000 horsepower turbine driven compressor unit at its existing Compressor Station 410 located in Mobile County, Alabama and would also abandon in place approximately 4 miles of 36-inch-diameter pipeline in Mobile County. Gulfstream would construct approximately 4 miles of thicker walled 36-inch-diameter pipeline to replace the abandoned pipeline and increase the maximum allowable operating pressure of approximately 59 miles of 36-inch-diameter onshore and offshore pipeline. The Project would also require the construction of metering equipment at Compressor Station 420 in Manatee County, Florida.

Background

On July 25, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Phase VI Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. To date, the Commission received comments from one landowner in response to the NOI. The primary issues raised by the commenter were not related to the Project. All substantive comments will be addressed in the forthcoming EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP19–475), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–18429 Filed 8–26–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9999–02–Region 5]

Proposed CERCLA Administrative Settlement Agreement for Alreco Metals Superfund Site, Benton Harbor, Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement and request for public comments.

SUMMARY: The Environmental Protection Agency (EPA) is giving notice of a proposed administrative settlement for recovery of past response costs concerning the Alreco Metals Superfund Site in Benton Harbor, Michigan with the following settling parties: Louis Padnos Iron & Metal Company; Toyota Motor Engineering & Manufacturing North America, Inc.; and Service Aluminum Corporation. The EPA invites written public comments on the Settlement for thirty (30) days following publication of this notice. The settlement requires the settling parties to pay $585,570.40 to the Hazardous Substance Superfund.

DATES: Comments must be received on or before September 26, 2019.

ADDRESSES: The proposed settlement and related documents can be viewed at the Superfund Records Center (SRC–7J), United States Environmental Protection Agency, Region 5, 77 W Jackson Blvd., Chicago, IL 60604, (312) 886–4465 and on-line at *https://response.epa.gov/site/site_profile.aspx?site_id=9619.* You may send comments, referencing the Alreco Metals Superfund Site in Benton Harbor, Michigan and identified by Docket ID No. [V–W–19–C–010], to the following address: William Greaves, Superfund & Emergency Management

Division (S–6J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590.

FOR FURTHER INFORMATION CONTACT: Josh Zaharoff, Office of Regional Counsel (C–14J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Josh Zaharoff may be reached by telephone at (312) 886–4460 or via electronic mail at *zaharoff.josh@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background Information

In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Alreco Metals Site in Benton Harbor, Michigan with the following settling parties: Louis Padnos Iron & Metal Company; Toyota Motor Engineering & Manufacturing North America, Inc.; and Service Aluminum Corporation. EPA completed a removal action at the Site that began on August 8, 2014. The Site is located in an industrial/commercial area along the banks of the Paw Paw River and is approximately 28 acres in size. The settlement requires the settling parties to pay $585,570.40 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

II. Opportunity to Comment

A. General Information

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Settlement. The Agency will consider all comments received and may modify or withdraw its consent to the Settlement if comments received disclose facts or considerations which indicate that the Settlement is inappropriate, improper, or inadequate.

B. Where do I send my comments or view responses?

Your comments should be mailed to William Greaves, Superfund & Emergency Management Division (S–6J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Be sure to label the comments with the Docket Number at the top of this notice and/or the property name. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center.

C. What should I Consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit ANY information you think or know is CBI to EPA through an agency website or via email. Clearly mark on your written comments all the information that you claim to be CBI. If you mail EPA your comments on a disk or CD–ROM (CD), mark the outside of the CD as CBI and then identify electronically within the CD the specific information that is claimed as CBI. In addition to one complete version of your comments that includes all the information claimed as CBI, you must submit for inclusion in the public docket a second copy of your comments that does not contain the information claimed as CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the subject of your comments by the docket number and the site name in the title of this notice or the **Federal Register** publication date and page number.
- Follow directions—the agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree with the terms of the Settlement; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the identified comment period deadline.

Dated: June 14, 2019.

Douglas Ballotti,

Director, Superfund & Emergency Management Division.

[FR Doc. 2019–18436 Filed 8–26–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 19–788]

Disability Advisory Committee; Announcement of Second Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces and provides an agenda for the second meeting of the third term of its Disability Advisory Committee (DAC or Committee).

DATES: Tuesday, September 24, 2019. The meeting will come to order at 9:00 a.m. Eastern Time.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Will Schell, Designated Federal Officer (DFO), at (202) 418–0767 (voice) or *DAC@fcc.gov*; or Debra Patkin, Alternate DFO, at (202) 870–5226 (voice or videophone for American Sign Language users).

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The meeting will be webcast with open captioning at: *www.fcc.gov/live*. In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public may comment or ask questions of presenters via the email address *livequestions@fcc.gov*. The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations or for materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) should be submitted via email to: *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the DAC is expected to receive and consider reports and recommendations

from its subcommittees. The DAC may also receive briefings from Commission staff on issues of interest to the Committee and may discuss topics of interest to the committee, including, but not limited to, matters concerning communications transitions, telecommunications relay services, emergency access, and video programming accessibility.

Federal Communications Commission.

Suzanne Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2019–18445 Filed 8–26–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0001)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (3064–0001) on June 27, 2019, the FDIC requested comment for 60 days on a proposal to renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

DATES: Comments must be submitted on or before September 26, 2019.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On June 27, 2019, the FDIC requested comment for 60 days on a proposal to renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

Proposal to renew the following currently approved collection of information:

1. *Title:* Interagency Charter and Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Form: Interagency Charter and Federal Deposit Insurance Application.

Affected Public: Banks or Savings Associations wishing to become FDIC-insured depository institutions.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Obligation to respond	Estimated number of respondents [1]	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Interagency Charter and Federal Deposit Insurance Application.	Mandatory	30	125	On Occasion ..	3,750

General Description of Collection: The Federal Deposit Insurance Act requires financial institutions to apply to the FDIC to obtain deposit insurance. This collection provides FDIC with the information needed to evaluate the applications.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on August 22, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–18414 Filed 8–26–19; 8:45 am]

BILLING CODE 6714–01–P

[1] To arrive at the estimated number of respondents published in the 60-day **Federal Register** notice (84 FR 30714, June 27, 2019), the FDIC counted the number of deposit insurance applications received between January 1, 2017 and March 31, 2019. Nine (9) applications were received in 2017; 27 were received in 2018; and six (6) were received during the first quarter of 2019. FDIC is aware that there has been increasing interest in forming new banks and each new bank would need to submit an application for Federal deposit insurance. In addition, the FDIC has begun to take steps to ease the deposit insurance application process. Based on the foregoing, FDIC determined that the annual number of respondents for this information collection should be adjusted to 34 and that number was used in to arrive at the burden estimate published in the 60-day notice.

Since the 60-day **Federal Register** notice was published, FDIC refined the estimated number of expected deposit insurance applications by annualizing the rate of applications received during the first quarter of 2019 to derive an annual estimate of 24. Using the above historical application data, FDIC staff produced an intermediate estimate of 20 as the annual average number of applications expected. Starting with the intermediate estimate of 20 respondents per year, and weighting the expert judgment of FDIC staff at 50 percent to incorporate the qualitative factors discussed above (20 + 0.50 * 20), FDIC is revising its estimated number of respondents for this information collection to 30 respondents per year.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0055; Docket No. 2019–0003; Sequence No. 7]

Submission for OMB Review; Freight Classification Description

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning freight classification description.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov.* Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0055, Freight Classification Description.

Instructions: All items submitted must cite Information Collection 9000–0055, Freight Classification Description. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Acquisition Policy, at 202–501–1448 or via email at *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0055, Freight Classification Description.

B. Needs and Uses

The Government is required to provide, in solicitations, a complete description of the supplies to be acquired and the packing requirements to determine transportation (freight rate) charges for the evaluation of offers. Generally, the freight rate for supplies is based on the ratings applicable to the freight classification description published in the National Motor Freight Classification (for carriers) and the Uniform Freight Classification (for rail) filed with Federal and State regulatory bodies.

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped supplies, and different freight classifications may apply, per FAR clause 52.247–53, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification description applicable to the supplies. The Government will use these descriptions as well as other information available to determine the classification description most appropriate and advantageous to the government.

C. Annual Burden

Respondents: 3,000.

Total Annual Responses: 9,000.

Total Burden Hours: 1,503.

D. Public Comment

A 60-day notice published in the **Federal Register** at 84 FR 28814 on June 20, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 First Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

Dated: August 22, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–18405 Filed 8–26–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078; Docket No. 2019–0003; Sequence No. 25]

Submission for OMB Review; Certain Federal Acquisition Regulation Part 15 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding certain Federal Acquisition Regulation part 15 requirements.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov.* Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements.

Instructions: All items submitted must cite Information Collection 9000–

0078, Certain Federal Acquisition Regulation Part 15 Requirements. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements.

B. Needs and Uses

DoD, GSA, and NASA are in the process of combining OMB control numbers for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify all burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports revision and extension of the expiration date of OMB control number 9000–0078 and combines it with the previously approved information collections OMB control numbers 9000–0115 and 9000–0173, with the new title ''Certain Federal Acquisition Regulation Part 15 Requirements''. Upon approval of this consolidated information collection, OMB control numbers 9000–0115 and 9000–0173 will be discontinued. The burden requirements previously approved under the discontinued numbers will be covered under OMB control number 9000–0078.

This clearance covers the information that offerors/contractors must submit to comply with the following FAR requirements:

1. *15.407–2(e), Make-or-buy programs.* When prospective contractors are required to submit proposed make-or-buy program plans for negotiated acquisitions, paragraph (e) requires the following information in their proposal: A description of each major item or work effort; categorization of each major item or work effort as ''must make,'' ''must buy, or ''can either make or buy;'' for each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or to ''buy;'' reasons for categorizing items and work efforts as ''must make'' or ''must buy,'' and proposing to ''make'' or to ''buy'' those categorized as ''can either make or buy;'' designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area; identification of proposed subcontractors, if known, and their location and size status; any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission; and any other information the contracting officer requires in order to evaluate the program.

2. *52.215–9, Changes or Additions to Make-or-Buy Program.* This clause requires the contractor to submit, in writing, for the contracting officer's advance approval a notification and justification of any proposed change in the make-or-buy program incorporated in the contract.

3. *52.215–19, Notification of Ownership Changes.* This clause requires contractors to notify the administrative contracting officer when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records. Notice of changes of ownership are necessary to adequately administer the cost principle at FAR 31.205–52, Asset valuations, which addresses the allowability of certain costs resulting from asset valuations following business combinations.

4. *52.215–22, Limitations on Pass-Through Charges—Identification of Subcontract Effort.* This provision requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with their proposal: (1) The total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor; (2) if the offeror intends to subcontract more than 70 percent of the total cost of work to be performed, the amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s), and a description of the value added by the offeror as related to the work to be performed by the subcontractor(s); and (3) if any subcontractor proposed intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed the amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s), and a description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

5. *52.215–23, Limitations on Pass-Through Charges.* This clause requires contractors to provide a description of the value added by the contractor or subcontractor, as applicable, as related to the subcontract effort if this effort changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed. The following contract types are excluded from this information collection requirement: A firm-fixed-price contract awarded on the basis of adequate price competition; a fixed-price contract with economic price adjustment awarded on the basis of adequate price competition; a firm-fixed-price contract for the acquisition of a commercial item; a fixed-price contract with economic price adjustment, for the acquisition of a commercial item; a fixed-price incentive contract awarded on the basis of adequate price competition; or a fixed-price incentive contract for the acquisition of a commercial item.

C. Annual Burden

Respondents/Recordkeepers: 4,653.

Total Annual Responses: 29,953.

Total Burden Hours: 62,241 (62,236 reporting hours + 5 recordkeeping hours).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 29207, on June 21, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements, in all correspondence.

Dated: August 21, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–18403 Filed 8–26–19; 8:45 a.m.]

BILLING CODE 6820–EP–P

OFFICE OF GOVERNMENT ETHICS

Updated OGE Senior Executive Service Performance Review Board

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members to OGE's Senior Executive Service (SES) Performance Review Board.

DATES: This update is effective as of August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Shelley K. Finlayson, Chief of Staff and Program Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; Telephone: 202–482–9300; TYY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.310 thereof in particular, one or more Senior Executive Service performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, the designated members of OGE's SES Performance Review Board are being drawn, as in the past, in large measure from the ranks of other executive branch agencies. The board shall review and evaluate the initial appraisal of each OGE senior executive's performance by his or her supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. In accordance with 5 CFR 430.311, this notice updates the membership of OGE's SES Performance Review Board as it was last published in 82 FR 43541 (September 18, 2017).

Approved: August 21, 2019.

Emory Rounds,

Director, U.S. Office of Government Ethics.

The following officials are appointed to serve as members of OGE's SES Performance Review Board: Shelley K. Finlayson, [Chair], Chief of Staff and Program Counsel, Program Counsel Division, Office of Government Ethics; Peter J. Constantine, Associate Solicitor, Office of Legal Counsel, Department of Labor; Kathleen Silbaugh, General Counsel, Office of the General Counsel, National Transportation Safety Board; and David Maggi, Chief, Ethics Law and Programs Division, Department Of Commerce.

[FR Doc. 2019–18368 Filed 8–26–19; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10697]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 26, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Website address at Website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. Type of Information Collection Request: New collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Coverage of Items and Services for Coverage with Evidence Development (CED); *Use:* The CED is a paradigm whereby Medicare covers items and services on the condition that they are furnished in the context of approved clinical studies or with the collection of additional clinical data. In making coverage decisions involving CED, CMS decides after a formal review of the medical literature to cover an item or service only in the context of an approved clinical study or when additional clinical data are collected to assess the appropriateness of an item or

service for use with a particular beneficiary. When an NCD requires CED under 1862(a)(1)(E), it is because the available evidence about a particular item or service is insufficient to support coverage outside the context of a well-designed clinical research study. Sponsors could build interim analyses and final analyses into their study design and communicate these results to CMS.

Section 1142 of the Act describes the authority of the Agency for Healthcare Research and Quality (AHRQ) to conduct and support research on outcomes, effectiveness, and appropriateness of services and procedures to identify the most effective and appropriate means to prevent, diagnose, treat, and manage diseases, disorders, and other health conditions. That section includes a requirement that the Secretary assure that AHRQ research priorities under Section 1142 appropriately reflect the needs and priorities of the Medicare program.

The coordination of AHRQ priorities under section 1142 with the needs and priorities of the Medicare program is accomplished through direct collaboration between the AHRQ and CMS. AHRQ reviews all CED NCDs established under Section 1862(a)(1)(E) of the Act. Consistent with section 1142, AHRQ also indicates its support for clinical research studies that CMS determines address the CED questions and meet the general standards for CED studies. In order for CMS (or its designated entity) to determine if the Medicare coverage criteria are met, as described in our regulations, CMS (or its designated entity) must review the study protocol and supporting materials, as needed. *Form Number:* CMS–10697 (OMB control number: 0938-New); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions*); Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 15,000. (For policy questions regarding this collection contact Xiufen Sui at 410–786–3136.)

Dated: August 22, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–18415 Filed 8–26–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA NUMBER: 93.568]

Reallotment of Fiscal Year 2018 Funds for the Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Division of Energy Assistance, Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of public comment.

SUMMARY: Notice is hereby given of a preliminary determination that funds from the fiscal year (FY) 2018 Low Income Home Energy Assistance Program (LIHEAP) are available for reallotment to States, Territories, Tribes, and Tribal Organizations that received FY 2019 direct LIHEAP grants. No subgrantees or other entities may apply for these funds.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: Comments may be submitted to: Clarence H. Carter, Acting Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 330 C Street SW, 5th Floor; Mail Room 5425; Washington, DC 20201 or via email: *Clarence.Carter@acf.hhs.gov.* Comments may also be faxed to (202) 401–5661.

FOR FURTHER INFORMATION CONTACT: Lauren Christopher, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 330 C Street SW, 5th Floor; Mail Room 5425; Washington, DC 20201. Telephone: (202) 401–4870. Email: *lauren.christopher@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: According to Section 2607(b)(1) of the Low Income Home Energy Assistance Act, (42 U.S.C. 8626(b)(1)), if the Secretary of HHS determines as of September 1, of any fiscal year, an amount in excess of 10 percent of the amount awarded to a grantee for that fiscal year (excluding Leveraging and REACH funds) will not be used by the grantee during that fiscal year, then the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to LIHEAP grantees during the following fiscal year. If reallotted, the LIHEAP block grant allocation formula will be used to distribute the funds. No funds may be allotted to entities that are not direct LIHEAP grantees during FY 2019.

It has been determined that $1,839,128 in LIHEAP funds may be available for reallotment during FY 2019. This determination is based on FY 2018 Carryover and Reallotment Reports which showed that seven grantees reported reallotment funds. These grantees were Alaska; Five Sandoval Indian Pueblos, INC.; Hoh Indian Tribe; Little River Band of Ottawa Indians; Northern Cheyenne Tribe; Three Affiliated Tribes; and Turtle Mountain Band of Chippewa Indians. Grantees submitted the FY 2018 Carryover and Reallotment Reports to the OCS, as required by regulations applicable to LIHEAP at 45 CFR 96.81(b).

The LIHEAP statute allows grantees who have funds unobligated at the end of the federal fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their full-year allotments to the next federal fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallotment under section 2607(b)(1) of the Low Income Home Energy Assistance Act, (42 U.S.C. 8626(b)(1)). The amount described in this notice was reported by grantees as unobligated FY 2018 funds in excess of the amount that these grantees could carry over to FY 2019.

In accordance with section 2607(b)(3) of the Act (42 U.S.C. 8626(b)(3)), comments will be accepted for a period of 30 days from the date of publication of this notice.

After considering any comments submitted, all current LIHEAP grantees will be notified of the final reallotment amount redistributed to them for obligation in FY 2019. This decision will be published in the **Federal Register** and in a Dear Colleague Letter that gets posted to ACF's website: *https://www.acf.hhs.gov/ocs/resource/dear-colleagues.*

If funds are reallotted, they will be allocated in accordance with section 2604 of the Act (42 U.S.C. 8623) and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 2019. As FY 2019 funds, they will be subject to all requirements of the Act, including section 2607(b)(2) (42 U.S.C. 8626(b)(2)), which requires that a grantee obligate at least 90 percent of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 2019.

ESTIMATED REALLOTMENT AMOUNTS OF FY 2018 LIHEAP FUNDS

Grantee name	Reallotment amount
Alaska	$1,579,924
Five Sandoval Indian Pueblos, INC	16,089
Hoh Indian Tribe	4,378
Little River Band of Ottawa Indians	47,440
Northern Cheyenne Tribe	45,607
Three Affiliated Tribes	140,582
Turtle Mountain Band of Chippewa Indians	5,108
Total	$1,839,128

Statutory Authority: 42 U.S.C. 8626.

Elizabeth Leo,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2019–18374 Filed 8–26–19; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3612]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public. Members will participate via teleconference.

DATES: The meeting will be held on October 9, 2019, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Avenue, Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. For those unable to attend in person, the meeting will also be webcast and will be available at the following link: *https://collaboration.fda.gov/vrbpac100919/.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Capt. Serina Hunter-Thomas, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6338, Silver Spring, MD 20993–0002, 240–402–5771, *serina.hunter-thomas@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On October 9, 2019, under topic I, the Center for Biologics Evaluation and Research's (CBER) VRBPAC will meet in open session to hear an overview of the research programs in the Laboratory of Hepatitis Viruses (LIR) and the Laboratory of Vector-Borne Viral Diseases (LVVD), Division of Viral Products, Office of Vaccines Research and Review, CBER, FDA. Also, on October 9, 2019, under topic II, the committee will meet in open session to discuss and make recommendations on the selection of strains to be included in an influenza virus vaccine for the 2020 southern hemisphere influenza season.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On October 9, 2019, from 8:30 a.m. to approximately 10 a.m. and from 11 a.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 2, 2019. Oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10 a.m. for the overview portion of the LHV/LVVD Site Visit (topic I), and from 1:30 p.m. to 2:15 p.m. for the influenza strain selection portion of the meeting (topic II). Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 24, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 25, 2019.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Capt. Serina Hunter-Thomas at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 16, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–18410 Filed 8–26–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–2966]

Male Breast Cancer: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Male Breast Cancer: Developing Drugs for Treatment.'' This draft guidance provides recommendations regarding the development and labeling of cancer drugs, including biological products, regulated by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) for the treatment of male patients with breast cancer. Specifically, this draft guidance recommends the inclusion of male patients in clinical trials of breast cancer drugs and provides recommendations on clinical development when males have either not been included in clinical trials for drugs to treat breast cancer or when inclusion of males in those trials is very limited. The development of drugs for male breast cancer may provide clinical data and additional FDA-approved treatment options to improve the clinical management of breast cancer in male patients.

DATES: Submit either electronic or written comments on the draft guidance by October 28, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–2966 for ''Male Breast Cancer: Developing Drugs for Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, CBER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; Division of Drug Information, CDER, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julia Beaver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2100, Silver Spring, MD 20993–0002, 240–402–0489; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Male Breast Cancer: Developing Drugs for Treatment.'' This draft guidance provides recommendations for sponsors regarding the development and labeling of cancer drugs and biological products regulated by CDER and CBER for the treatment of male patients with breast cancer.

Males have historically been excluded from clinical trials of breast cancer

drugs because breast cancer in males is rare. This has resulted in limited FDA-approved treatment options for males. Clinical management of male breast cancer is generally based on experience with and data from females with breast cancer, rather than on data from prospective, randomized clinical trials.

The draft guidance recommends sponsors discuss their breast cancer drug development plan early in development with CDER or CBER, as applicable. The draft guidance recommends that eligibility criteria for clinical trials of breast cancer drugs allow for inclusion of males. When males have not been included or when inclusion of males is very limited in clinical trials for breast cancer drugs, the guidance includes clinical development recommendations for when no difference in efficacy or safety is anticipated between males and females based on the drug's mechanism of action and for when there is a concern for differential efficacy or safety between males and females.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Male Breast Cancer: Developing Drugs for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. 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. 3501–3520). The collections of information in 21 CFR 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under 0910–0338; the collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *https://www.regulations.gov.*

Dated: August 19, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–18363 Filed 8–26–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Delta States Rural Development Network Grant Program; OMB No. 0915–0386—Extension

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 must be received no later than October 28, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 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 Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Delta States Rural Development Network Grant Program, OMB No. 0915–0386—Extension

Abstract: The Delta States Rural Development Network Grant (Delta) Program is authorized by the Public Health Service Act, Section 330A(f) (42 U.S.C. 254c(f)), as Public Law 114–53. The Delta Program supports projects that demonstrate evidence based and/or promising approaches around cardiovascular disease, diabetes, acute ischemic stroke or obesity in order to improve health status in rural communities throughout the Delta Region. Key features of Delta Program-supported projects are collaboration, adoption of an evidence-based approach, demonstration of health outcomes, program replicability, and sustainability.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy (FORHP) including the following: (a) Access to care, (b) population demographics, (c) staffing, (d) sustainability, (e) project specific domains, and (f) health related clinical measures. These measures speak to FORHP's progress toward meeting the goals set.

Likely Respondents: Recipients of the Delta States Rural Development Network Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Delta States Rural Development Network Program Performance Improvement Measurement System	12	1	12	1.66	*20
Total	12		12		20

*Number is rounded to the nearest whole number.

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, Division of the Executive Secretariat.

[FR Doc. 2019–18425 Filed 8–26–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Evidence-Based Telehealth Network Program Measures, OMB No. 0906–xxxx—NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than September 26, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Evidence-Based Telehealth Network Program Measures, OMB No. 0906–xxxx—NEW.

Abstract: This ICR is for a new approval of measures for the Federal Office of Rural Health Policy's Office of Advancement of Telehealth programs. Specifically, grants administered in accordance with the following legislative statute (ii) Section 711(b) of the Social Security Act (42 U.S.C. 912(b)), as amended. The purpose of these programs are to provide grants that demonstrate how telehealth programs and networks can improve access to quality health care services in rural, frontier, and underserved communities. These grants will work to: (a) Expand access to, coordinate, and improve the quality of health care services; (b) improve and expand the training of health care providers; and (c) expand and improve the quality of health information available to health care providers and patients and their families for decision-making. In addition, these grants will help HRSA assess the effectiveness of evidence based practices with the use of telehealth for patients, providers, and payers.

A 60-day notice was published in the **Federal Register** on April 08, 2019, vol. 84, No. 67; pp. 13936. There were no public comments.

Need and Proposed Use of the Information: The measures will enable HRSA and HRSA to capture awardee-level and aggregate data that illustrate the impact and scope of federal funding along with assessing these efforts. The measures cover the principal topic areas of interest to HRSA including: (a) Population demographics; (b) access to health care; (c) cost savings and cost-effectiveness; and (d) clinical outcomes.

Likely Respondents: Award recipients of the Evidence Based Telehealth Network Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Evidence-Based Telehealth Network Program Report	50	12	600	14	8,400
Telehealth Performance Measurement Report	50	1	50	5	250

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
	*50	.....	650	.....	8,650

*There are 50 unique respondents. All respondents will be responding to the two forms.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–18388 Filed 8–26–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information: Regarding Revisions to the PHS Guideline for Reducing Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) Through Organ Transplantation

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Request for information; notice.

SUMMARY: The Office of the Assistant Secretary for Health in the Department of Health and Human Services (HHS) seeks public comment regarding proposed revisions to the 2013 PHS Guideline for Reducing Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) Through Organ Transplantation.

DATES: To be assured consideration, comments must be received at the address provided below no later than 5:00 p.m. ET on September 26, 2019.

ADDRESSES: Electronic responses are strongly preferred and may be addressed to *ACBTSA@hhs.gov.* Written responses should be addressed to: U.S. Department of Health and Human Services, Mary E. Switzer Building, 330 C Street SW, Room L001, Washington, DC 20024 Attn: ACBTSA—RFI.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Designated Federal Official, Office of Infectious Disease and HIV/AIDS Policy, (202) 795–7608.

SUPPLEMENTARY INFORMATION:

I. Background

Since implementation of the Guideline in 2014,[1] the organ donation and transplantation community monitored the impact of the recommendations on provider and patient perceptions, organ utilization, and clinical outcomes. HHS conducted analyses to inform efforts to revise the Guideline recommendations. In April 2019, the Assistant Secretary for Health of the Department of Health and Human Services (HHS) received input from the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) regarding revisions to the Guideline recommendations to reflect recent epidemiologic trends in clinical characteristics of deceased organ donors and scientific advances and improvements in testing for and treatment of HIV, HBV, and HCV infections.

HHS is asking respondents to review the proposed revisions to the current Guideline and provide assessments on updating the Guideline, whether these changes are achievable in the clinical setting, or if there are potential barriers to implementation. In addition, impact on organ allocation and utilization should be considered. Other comments pertinent to these proposed revisions are welcome.

Since the emergence of the human immunodeficiency virus (HIV) epidemic, the U.S. Public Health Service (PHS) has made recommendations to reduce the risk of HIV transmission associated with organ transplantation.[2] [3] Historically, recommendations included identifying risk factors among organ donors associated with HIV infection to minimize risk of potential transmission to recipients. Recommendations also included laboratory screening of donors using anti-HIV antibody testing, with additional testing recommendations added as technologies such as nucleic acid testing (NAT) were developed. In 2013, based on donor-derived transmission events and reports of poor recipient outcome from hepatitis B (HBV) and C (HCV) transmission, the PHS released a revised guideline. The 2013 Guideline added organ donor screening recommendations for HBV (hepatitis B surface antigen (HBsAg) and total antibody to hepatitis B core antigen (anti-HBc)) and HCV (antibody to hepatitis C (anti-HCV) and NAT), in addition to HIV, to reduce the risk of unintended transmission through transplantation. This revised Guideline was enhanced by recommending specific recipient informed consent and post-transplant recipient monitoring for evidence of possible disease transmission.

Per the 1994 guideline, donors with risk factors for HIV infection and transmission to recipients were designated ''Centers for Disease Control and Prevention (CDC) High Risk'' donors. The 2013 Guideline changed this terminology to ''Increased Risk Donor (IRD)'' and recommended HCV nucleic acid testing (NAT) for all donors and HIV NAT or p24 antigen testing for IRD. For living donors, testing was recommended to be performed as close as possible to the date of the organ recovery but at least within 28 days prior to surgery. For deceased donors, specimens for testing were to be obtained before procurement but with no specific recommendation on the timing of collection relative to organ recovery. The term ''Increased Risk'' was adopted over ''High Risk'' to convey the continued but small possibility of donor-derived disease transmission from donors with risk factors, even with use of the more sensitive NAT screening tests.

The 2013 Guideline specifically outlines 12 medical or social history criteria resulting in IRD designation if these risk factors occurred within the 12 months prior to organ recovery. The 12 criteria are:

1. Sex with a person known or suspected to have HIV, HBV, or HCV infection.

[1] Seem DL, Lee I, Umscheid CA, Kuehnert MJ. PHS guideline for reducing human immunodeficiency virus, hepatitis B virus, and hepatitis C virus transmission through organ transplantation. Public health reports (Washington, DC: 1974). 2013;128(4):247–343.

[2] CDC. Guidelines for preventing transmission of human immunodeficiency virus through transplantation of human tissue and organs. Centers for Disease Control and Prevention. MMWR Recommendations and reports: Morbidity and mortality weekly report Recommendations and reports/Centers for Disease Control. 1994;43(RR–8):1–17.

[3] CDC. Testing donors of organs, tissues, and semen for antibody to human T-lymphotropic virus type III/lymphadenopathy-associated virus. MMWR Morbidity and mortality weekly report. 1985;34(20):294.

2. Men who have had sex with men (MSM).

3. Women who have had sex with a man with a history of MSM behavior.

4. Sex in Sex with a person who had sex in exchange for money or drugs.

5. Sex with a person that has injected drugs by intravenous, intramuscular, or subcutaneous route.

6. Injecting drugs by intravenous, intramuscular, or subcutaneous route for nonmedical reasons.

7. Incarceration for >72 consecutive hours.

8. Syphilis, gonorrhea, chlamydia, or genital ulcers.

9. Child (age ≤18 months) born to a mother known to be infected with, or at increased risk for HIV, HBV, or HCV.

10. Child breastfed within the preceding 12 months by mother known to be infected with, or at increased risk for HIV infection.

11. Hemodialysis (only increased risk for HCV).

Deceased donors for whom medical or social history are unavailable at the time of organ recovery are designated IRD. Donors are also designated as IRD if the organ-donation serum specimen used for HIV, HBV, or HCV testing meets criteria for hemodilution due to the donor receiving crystalloid or colloid infusion prior to specimen collection, based on hemodilution calculations described in FDA guidance (*https://www.fda.gov/media/73072/download*). The 2013 recommendations were not intended to restrict transplantation (or exclude specific donors) but to facilitate appropriate donor laboratory screening, enhance informed decision making by recipients and families, and ensure prompt recognition and treatment of donor-derived disease transmission events.

The following issues regarding the perceived impact of the 2013 Guideline on organ utilization and allocation, clinical decision-making, and recipient outcomes have been reported in the scientific literature or communicated directly to relevant federal agencies, including CDC and the Health Resources and Services Administration (HRSA):

1. As a result of the national substance abuse and overdose epidemic, an increasingly larger number and proportion of organ donors are designated as IRD. These donors are often younger and have better organ quality compared with non-IRD standard risk donors (SRD).

2. Organs from IRD are underutilized compared with organs from SRD.

3. The ''IRD'' label may discourage organ acceptance and utilization by transplant physicians and transplant candidates:

a. The label may result in a perception that the risk is higher than the true risk for disease transmission and resultant morbidity and mortality of using these organs.

b. The label may convey a perception that IRD organs are of poorer quality despite scientific evidence that demonstrates these donors are often younger and have higher-quality organs.

c. Due to misperceptions related to disease transmission risk or organ quality, candidates may opt to decline an IRD organ offer and choose to wait for another organ, resulting in preventable morbidity and mortality had they accepted receipt of the IRD organ.

4. Not all criteria for current IRD designation are actually associated with a significant risk of HIV, HBV, and HCV infection and/or transmission and some of the criteria should be removed.

5. The 2013 Guideline recommendation designates donors as IRD if risk factors occur within 12 months prior to donation. Because organ procurement organizations (OPOs) have universally implemented screening of organ donors for HIV, HBV, and HCV by NAT, the 12 month timeframe should be shortened.

6. Because all organ donors are universally screened by NAT and the risk of unexpected donor-derived disease transmissions has decreased, donor risk designation and informed consent requirements should be modified.

7. Because the number of organ donors with risk factors has increased and effective suppression of HIV and HBV and a cure of HCV infection are available, all recipients should be screened for HIV, HBV, and HCV post-transplant, including recipients of organs from donors without recognized risk factors due to inherent uncertainty of questionnaire responses provided by donor next of kin.

HHS conducted additional data analyses in order to better understand the impact of the PHS Guideline recommendations on organ utilization, allocation, and recipient outcomes. The following analytic activities were undertaken by HHS with associated findings summarized:

1. A descriptive analysis of Organ Procurement and Transplantation Network (OPTN) data to calculate the total numbers and proportions of organ donors classified as IRD by year (since 2010) and further stratify by viral bloodborne pathogen screening results was conducted. This analysis found that the percentage of adult donors classified as IRD has increased from 9.3% (2010) to 26.2% (2017), with higher percentages in some geographic regions. The percentage of deceased donors with drug intoxication as the mechanism of death increased from 4.3% (2010) to 12.6% (2016); approximately 60% of these donors have a history of nonmedical injection drug use (IDU). Additionally, the number of HCV-infected donors identified via NAT has increased among IRD since 2014.

2. A descriptive analysis was performed of all CDC-led outbreak investigations (2014–2017) of donor-derived HBV/HCV transmissions, including a summary of clinical outcomes and antiviral treatment of infected recipients. CDC investigated 9 potentially donor-derived transmission events of HCV, involving 31 HCV-negative recipients, of whom 20 developed HCV infection. During this period, CDC also investigated 7 potentially donor-derived transmission events of HBV, involving 15 HBV-negative recipients, of whom 7 developed HBV infection. No recipient died of either HCV- or HBV-related complications. In these cases, identification of organ donors with risk factors for viral bloodborne pathogen infection and IRD designation led to early diagnosis and treatment of recipient infection, which possibly averted graft failure or death.

3. Logistic regression analyses were conducted of national OPTN donor and recipient data to quantify the impact of IRD designation on organ utilization and thereby determine whether or not IRD designation was associated with organ underutilization, and if so, then to what extent. After adjusting for variables that may have impacted organ acceptance decisions (including donor HBV/HCV serostatus), there was no observed underutilization of livers or hearts from IRD donors. IRD designation appeared to be associated with underutilization of adult kidneys but the magnitude was smaller than previous estimates and this association appeared attributable to low use by a subset of transplant centers, rather than broad underutilization by all U.S. transplant programs.

4. Mathematical modeling was performed using Monte Carlo simulation to estimate the current probability of undetected HIV, HBV, or HCV infection in an IRD donor for whom all recommended NAT testing was negative. These analyses were conducted to identify a shorter, but safe timeline during which risk behaviors result in IRD designation. The probability of undetected infection in donors with high-risk behaviors 30 days after the most recent potential risk

behavior was <1/1,000,000 for HIV and HCV and near 1/1,000,000 for HBV. The time period during which high risk behaviors lead to donor classification as increased risk can be safely reduced from 12 months to a shorter interval. HHS conducted an assessment of the current criteria that result in IRD designation to determine which criteria have been previously implicated in a donor-derived transmission of HIV, HBV, or HCV and are therefore associated with significant epidemiological risk of transmission. Criteria that were not previously implicated in cases of transmissions from IRD-designated organs included being a women who had sex with a man with a history of same-sex sexual contact or having been newly diagnosed or have been treated for syphilis, gonorrhea, chlamydia, or genital ulcers, and hemodialysis.

In April 2019, HHS convened the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) to receive expert input on whether, and if so, how, the current PHS Guideline recommendations should be revised (*https://www.hhs.gov/oidp/advisory-committee/blood-tissue-safety-availability/meetings/2019-04-15/index.html*). Additionally, HHS solicited input from this committee on specific changes to current recommendations. The committee voted in favor of the following recommendations:

1. Continued recognition and designation of a category of potential organ donors with an augmented chance of transmission of HIV, HBV, and HCV.

2. Screen all organ donors for HIV, HBV, and HCV using NAT in addition to serology.

3. Shorten the current 12-month risk factor timeframe to 3 months.

4. Test all recipients, regardless of donor risk profile, for HIV, HBV, and HCV using NAT between 2 and 4 weeks after transplantation. Repeat testing, particularly for HBV, to be considered in future discussions.

5. Change the current ''increased risk donor'' terminology to reduce cognitive bias and improve decision making among clinicians and patients.

6. Remove the following as medical/social criteria:

a. Women who have had sex with a man with a history of same-sex sexual contact;

b. Newly diagnosed or have been treated for syphilis, gonorrhea, chlamydia, or genital ulcers;

c. Hemodialysis;

d. Hemodiluted blood specimen used for infectious disease testing;

e. Child (age ≤18 months) born to a mother at increased risk for HIV, HBV, or HCV;

f. Child breastfed within the preceding 12 months by mother at increased risk for HIV infection.

7. Continue the following criteria that would result in augmented donor risk designation: Sex with a person known or suspected to be HIV, HBV, or HCV infected; Man who has sex with men; Sex in exchange for money/drugs; Sex with a person who had sex in exchange for money/drugs; Non-medical injection of drugs; Sex with person who has engaged in non-medical drug injection; Incarceration for >72 hours; Unknown medical/social history; Child born to a mother with HIV.

8. Support the development and use of tools and processes to educate transplant providers and enhance the process of transplant candidate counseling in order to enhance organ utilization.

II. Potential Revisions to the 2013 Guideline

HHS has reviewed the ACBTSA recommendations and other available information and is considering the following revisions to current recommendations in the 2013 Guideline:

1. Test all organ donors for HIV, HBV, and HCV using serological tests (including total antibody to hepatitis B core antigen [total anti-HBc], hepatitis B surface antigen [HBsAg], and hepatitis C antibody [anti-HCV]) and NAT.

a. For living potential donors, testing should continue to be performed as close as possible to the surgery, but at least within the 7-day time period prior to organ recovery.

b. For deceased donors, the donor specimen should be collected within 72 hours prior to organ recovery with results of these screening tests available at the time of organ recovery. If the donor sample used for testing was collected more than 24 hours prior to organ recovery, an additional donor specimen should be collected in the immediate 24 hours prior to organ recovery and tested for HIV, HBV, and HCV by NAT. Results of these screening tests should be made available as soon as possible, even if these results might not be available at the time of organ recovery.

2. Regardless of donor risk profile for HIV, HBV, or HCV, transplant programs should test all organ recipients:

a. Before transplantation for HIV, HBV, and HCV using NAT and serologic tests including total anti-HBc, HBsAg, anti-HCV, and hepatitis B surface antibody (anti-HBs);

b. At 4–6 weeks following transplantation for HIV, HBV, and HCV (with NAT); and

c. At 12 months following transplantation for HBV (with NAT).

3. OPOs should ascertain whether any of the following medical or social risk criteria were present in potential organ donors within 30 days prior to organ recovery:

a. Sex with a person known/suspected to be HIV, HBV, or HCV infected

b. Being a man who has had sex with another man

c. Sex in exchange for money/drugs

d. Non-medical drug injection

e. Sex with a person with history of non-medical drug injection

f. Incarceration for >72 consecutive hours

g. Child breastfed by a mother with HIV

h. Child born to a mother with HIV, HBV, or HCV

OPOs should identify donors for whom medical and social history is unknown at the time of organ recovery, which is also considered a risk criterion.

4. When donors with ≥1 of the criteria as specified under #3 are identified, OPO's should communicate this information to the appropriate transplant centers. Transplant centers should discuss this information with transplant candidates and families as part of transplantation-related informed consent discussions. Transplant centers should make efforts to contextualize these discussions and should include the following:

a. The risk of undetected HIV, HBV, or HCV infection is very low

b. Recipients are universally tested for HIV, HBV, and HCV after transplantation and should transmission occur, effective therapies are available

c. Recipients may have a higher chance of survival by accepting organs from donors with risk factors for HIV, HBV, and HCV compared with waiting for an organ from a donor without recognized risk factors

5. Remove any specific label (*e.g.,* ''increased risk donor'') to describe donors with risk factors for undetected HIV, HBV, or HCV infection, with inclusion of additional strategies to enhance recipient safety.

6. No requirement for specific informed consent with recipients who are considering acceptance of these organs, though recipients would still be informed of certain donor risk factors.

7. All organ transplant candidates should be vaccinated for HBV per previous recommendations (*https://doi.org/10.1111/ctr.13563*).

8. HHS proposes no additional substantive changes to the following sections of the 2013 PHS Guideline:

a. Collection and/or storage of donor and recipient specimens

b. Tracking and reporting of HIV, HBV, and HCV infection in donors or recipients

HHS recognizes that the elimination of a specific label, (*e.g.,* ''increased risk donor'') to designate a separate group of organ donors with specific characteristics associated with a relatively small increased risk of donor-derived transmission of HIV, HBV, or HCV is a change to one of the ACBTSA recommendations for Guideline revision. HHS also acknowledges the diversity of opinions expressed during the deliberations of this committee regarding whether or not to continue to use any label to designate this group of organ donors. HHS has evaluated the potential advantages and disadvantages of using such a label for a specific subset of all organ donors and proposes the approach outlined above for several reasons:

1. Designating a subset of organ donors does not necessarily prevent or reduce the risk of transmission of disease (HIV, HBV, or HCV).

2. Next-of-kin interviews used to identify risk factors may be unreliable.

3. For transplant candidates with end-stage organ disease, the risk of severe morbidity or mortality associated with HIV, HBV, or HCV transmission as a result of accepting an IRD organ is less than the risk of mortality while remaining on the wait list for another organ offer.

4. The risk of morbidity or mortality from HIV, HBV, or HCV transmission from an IRD organ is less than other risks of organ transplant-related complications, including organ rejection, and infections resulting from immune suppression.

5. Use of a label to specify an organ donor group with small risk of disease transmission (*e.g.,* HIV, HBV, HCV) can detract from the recognition of other known clinical attributes in some donors that can place recipients at even greater risk for morbidity and mortality.

We seek informed feedback regarding this proposed approach to revising the recommendations in the 2013 Guideline, including the feasibility of the recommended timing of testing for living and deceased donors.

Dated: August 8, 2019.

Tammy R. Beckham,

Director, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2019–17759 Filed 8–26–19; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Introduction to Cancer Research Careers (ICRC) Application (NCI)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Agustina Boswell, Program Coordinator, Office of Workforce Planning and Development, National Cancer Institute, 9609 Medical Center Drive, Room 2E–134, Rockville, Maryland 20892 or call non-toll-free number (240) 276–5162 or Email your request, including your address to: *boswellam@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 10, 2019, (84 FR 20642) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: The National Cancer Institute's Introduction to Cancer Research Careers (ICRC) Application (NCI), 0925–XXXX, Exp., Date XX/XXXX, NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute's (NCI) ICRC fellowship program supports NCI's goal of training cancer researchers for the 21st century. Applying to the ICRC program through the ICRC website application is required in order for undergraduates, postbaccalaureate, graduate student candidates to be considered for entry into the program. The purpose of the ICRC Application is to assure that candidates for the ICRC program meet basic eligibility requirements; to assess their potential as future scientists; to determine where mutual research interests exist; and to make decisions regarding which applicants will be proposed and approved for fellowship awards. The information is for internal use to make decisions about prospective fellows and students that could benefit from the ICRC program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden are 240 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Individuals	120	1	1	120

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Individuals	240	1	30/60	120
Totals		360		240

Patricia M. Busche,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2019–18426 Filed 8–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; The Experimental Therapeutics Clinical Trials Network (UM1/U24).

Date: September 23–24, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W116, National Cancer Institute, Rockville, MD 20892–9750, 240–276–5413, *klaus.piontek@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE I (P50).

Date: September 26–27, 2019.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Majed M. Hamawy, Ph.D., MBA, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Dr., Rm 7W120, Bethesda, MD 20892, 240–276–6457, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–2: Small Grants Program for Cancer Research (Omnibus R03).

Date: October 4, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Ombretta Salvucci, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Rockville, MD 20850, 240–276–7286, *salvucco@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantitative Imaging Tools and Co-Clinical Imaging Resources.

Date: October 11, 2019.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850, 240–276–7684, *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Optimizing the Management & Outcomes for Cancer Survivors.

Date: October 15, 2019.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850, 240–276–5122, *hasan.siddiqui@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Program Project III.

Date: October 16–17, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, Nation Institutes of Health, Rockville, MD 20850, 240–276–5864, *jennifer.schiltz@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Assay Validation of High Quality Markers for Clinical Studies in Cancer.

Date: October 17, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850, 240–276–7684, *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3: Small Grants Program for Cancer Research (Omnibus R03).

Date: October 22, 2019.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850, 240–276–5122, *hasan.siddiqui@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Biospecimen Science Approaches.

Date: November 6, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W234, Bethesda, MD 20892–9750, 240–276–6368, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular and Cellular Analysis Technologies.

Date: November 7, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology & Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850, (240) 276–5460, *jfang@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–18383 Filed 8–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2019–0019]

U.S. Customs and Border Protection User Fee Advisory Committee (UFAC) Charter Renewal

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Charter Renewal.

SUMMARY: The Secretary of the Department of Homeland Security (DHS) has determined that the renewal of the charter of the U.S. Customs and Border Protection User Fee Advisory Committee (UFAC) is necessary and in the public interest in connection with the U.S. Customs and Border Protection's (CBP's) performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: U.S. Customs and Border Protection User Fee Advisory Committee (UFAC).

FOR FURTHER INFORMATION CONTACT: Ms. Sonja Grant, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

SUPPLEMENTARY INFORMATION:

Purpose and Objective: The charter of the U.S. Customs and Border Protection User Fee Advisory Committee (UFAC) is being renewed for two years in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. A copy of the charter can be found at *http://www.cbp.gov/trade/stakeholder-engagement/user-fee-advisory-committee.* UFAC is tasked with providing advice to the Secretary of the Department of Homeland Security through the Commissioner of U.S. Customs and Border Protection on matters related to the performance of inspections coinciding with the assessment of a customs or immigration user fee.

Duration: The committee's charter is effective June 21, 2019, and expires June 21, 2021.

Responsible CBP Official: Valarie Neuhart, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440.

Dated: August 19, 2019.

Valarie Neuhart,

Deputy Executive Director, Office of Trade Relations.

[FR Doc. 2019–18353 Filed 8–26–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0123]

Agency Information Collection Activities: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision and extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 26, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 22505) on May 17, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Regulations Relating to Recordation and Enforcement of Trademark and Copyrights (Part 133 of the CBP Regulations).

OMB Number: 1651–0123.

Abstract: Title 19 of the United States Code section 1526(e) prohibits the importation of articles that bear a counterfeit mark of a trademark that is registered with the United States Patent and Trademark Office (USPTO) and recorded with U.S. Customs and Border Protection (CBP). Pursuant to 15 U.S.C. 1124, the importation of articles that copy or simulate the trade name of a manufacturer or trader, or copy or simulate a trademark registered with the USPTO and recorded with CBP is prohibited. Likewise, under 17 U.S.C. 602 and 17 U.S.C. 603, the importation of articles that constitutes an infringement of copyright in protected copyrighted works is prohibited. Both 15 U.S.C. 1124 and 17 U.S.C. 602, authorize the Secretary of the Treasury to prescribe by regulation for the recordation of trademarks, trade names and copyrights with CBP. Additional rulemaking authority in this regard is conferred by CBP's general rulemaking authority as found in 19 U.S.C. 1624.

CBP officers enforce these intellectual property rights at the border. The information that respondents must submit in order to seek the assistance of CBP to protect against infringing imports is specified for trademarks under 19 CFR 133.2 and 133.3, and the information to be submitted for copyrights is specified under 19 CFR 133.32 and 133.33. Trademark, trade name, and copyright owners seeking border enforcement of their intellectual property rights provide information through the recordation process in order to assist CBP officers in identifying violating articles at the border. Respondents may submit this information through the IPR e-Recordation website at *https://iprr.cbp.gov/.*

Collection Revisions

On December 15, 2017 CBP published a Final Rule in the **Federal Register** (82 FR 59511) regarding Donations of Technology and Related Support Services to Enforce Intellectual Property Rights. 19 CFR 133.61 Subpart H has been added which authorizes CBP to receive and accept donations of hardware, software, equipment, and similar technologies, as well as training and related support service, for the purpose of assisting CBP in enforcing IPR. CBP is revising this collection of information to include IPR Donations. A donation offer must be submitted to CBP either via email, to *dap@cbp.dhs.gov,* or mailed to the attention of the Executive Assistant Commissioner, Office of Field Operations, or his/her designee.

The donation offer must describe the proposed donation in sufficient detail to enable CBP to determine its compatibility with existing CBP technologies, networks, and facilities (*e.g.,* operating system or similar requirements, power supply requirements, item size and weight, etc.). The donation offer must also include information pertaining to the donation's scope, purpose, expected benefits, intended use, costs, and attached conditions, as applicable, that is sufficient to enable CBP to evaluate the donation and make a determination as to whether to accept it. CBP will notify the donor, in writing, if additional information is requested or if CBP has determined that it will not accept the donation. If CBP accepts a donation, CBP will enter into a signed, written agreement with an authorized representative of the donor. The agreement must contain all applicable terms and conditions of the donation.

Current Actions: CBP proposes to revise and extend the expiration date of this information collection with a change to the burden hours and the information collected.

Type of Review: Revision with change.

Affected Public: Businesses and Individuals.

IPR Recordation Application:

Estimated Number of Respondents: 2,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 2,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000.

IPR Donations:

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Dated: August 22, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–18449 Filed 8–26–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0081]

Agency Information Collection Activities: Delivery Ticket

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 26, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP

programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 26129) on June 5, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Delivery Ticket.
OMB Number: 1651–0081.
Form Number: CBP Form 6043.
Abstract: CBP Form 6043, *Delivery Ticket,* is used to document transfers of imported merchandise between parties. This form collects information such as the name and address of the consignee; the name of the importing carrier; lien information; the location of where the goods originated and where they were delivered; and information about the imported merchandise. CBP Form 6043 is filled out by warehouse proprietors, carriers, Foreign Trade Zone operators and others involved in transfers of imported merchandise. This form is authorized by 19 U.S.C. 1551a and 1565, and provided for by 19 CFR 4.34, 4.37 and 19.9. It is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=6043&=Apply.*
Action: CBP proposes to extend the expiration date of this information collection with a decrease in burden hours due to revised agency estimates, there is no change to the information collected.
Type of Review: Extension (with change).
Affected Public: Businesses.
Estimated Number of Respondents: 1,156.
Estimated Number of Annual Responses per Respondent: 200.
Estimated Number of Total Annual Responses: 231,200.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 57,800.

Dated: August 22, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–18444 Filed 8–26–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0061]

Agency Information Collection Activities: Application To Establish a Centralized Examination Station

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 26, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via email to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 26127) on June 5, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application to Establish a Centralized Examination Station.

OMB Number: 1651–0061.

Abstract: A CES is a facility where imported merchandise is made available to CBP officers for physical examination. If a port director decides that a CES is needed, he or she solicits applications to operate a CES. The information contained in the application is used to determine the suitability of the applicant's facility; the fairness of fee structure; and the knowledge of cargo handling operations and of CBP procedures. The names of all corporate officers and all employees who will come in contact with uncleared cargo are also to be provided so that CBP may perform background investigations. The CES application is provided for by 19 CFR 118.11 and is authorized by 19 U.S.C. 1499, Tariff Act of 1930.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100 hours.

Dated: August 22, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–18447 Filed 8–26–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2019–0012]

Technical Resource for Incident Prevention (TRIPwire) User Registration and Questionnaire

AGENCY: Infrastructure Security Division (ISD), Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; revision, 1670–0028.

SUMMARY: DHS CISA ISD will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are due by October 28, 2019.

ADDRESSES: You may submit comments, identified by docket number CISA–2019–0012, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Please follow the instructions for submitting comments.
- *Email: dennis.molloy@cisa.dhs.gov*. Please include docket number CISA–2019–0012 in the subject line of the message.
- *Mail:* Written comments and questions about this Information Collection Request should be forwarded to DHS/CISA/ISD, ATTN: 1670–0028, 245 Murray Lane SW, Mail Stop 0609, Washington, DC 20598–0609.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received, please go to *www.regulations.gov* and enter docket number CISA–2019–0012.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Dennis Molloy, 703–235–9388, *dennis.molloy@cisa.dhs.gov*.

SUPPLEMENTARY INFORMATION: The CISA ISD Office of Bombing Prevention (OBP) has a leading role in implementation of the national counter-IED policy, articulated through Presidential Policy Directive 17 (PPD–17) Countering IEDs), serving as the Deputy Administrator of the federal interagency Joint Program Office for Countering Improvised Explosive Devices (JPO C–IED) and working in close collaboration with the White House National Security Council. The JPO C–IED coordinates and tracks Federal government progress in building national counter-IED capabilities. OBP also leads the DHS in implementation of the national counter-IED policy, serving as the DHS Counter-IED Program Management Office and chairing the DHS IED Working Group.

OBP is instrumental in aligning DHS and national counter-IED efforts through centralized and effective coordination of ongoing programs with national policy and strategy goals, resulting in better resource allocation within OBP and across DHS and our Federal, state, local, tribal, territorial and private sector partners.

TRIPwire (Technical Resource for Incident Prevention) is the DHS online, collaborative information-sharing network for bomb technicians, first responders, military personnel, government officials, intelligence analysts, and select private sector security professionals to increase awareness of evolving IED tactics, techniques, and procedures, as well as incident lessons learned and counter-IED preparedness information.

Users from Federal, State, local, and tribal government entities, as well as business and/or other for-profit industries, can elect to register for TRIPwire access. The TRIPwire portal contains sensitive information related to terrorist use of explosives and therefore user information is needed to verify eligibility and access to the system.

There are three main instruments within this collection: TRIPwire User Registrations, TRIPwire Revalidations, and TRIPwire Questionnaire. The information collected during the TRIPwire user registration process is reviewed electronically by the OBP to validate the user's ''need to know,'' which determines their eligibility for and access to TRIPwire. OBP verifies users need for access by confirming that a valid email address is used to register and checking employment references.

Annually, users are revalidated based on the information provided during their registration. For revalidation, users and employment references receive a system generated email to validate that access is still required and their information is still accurate.

OBP sends registered users a quarterly questionnaire seeking feedback as to how registrants use TRIPwire information, products, and tools. OBP uses the information collected during a quarterly questionnaire to review and improve the effectiveness and adequacy

of the TRIPwire content and system features.

TRIPwire registration is user-driven and is completed electronically via the secure TRIPwire interface. Users are required to have a computer and access to the internet. The registration process requires users to provide their full name, assignment, citizenship, job title, employer name, professional address and contact information, as well as an Employment Verification Contact and their contact information. Notifications regarding the user registration are handled via electronic submission responses and/or email. In addition to electronic registration, TRIPwire uses automated notifications to registered users when/if their account or password is set to expire as well as annual re-verification of users' need for access to TRIPwire.

The TRIPwire Questionnaire is also collected electronically via a Survey Monkey link that is emailed to respondents. The Survey Monkey settings selected ensure that submissions are anonymous, and that an IP address is not collected.

The changes to the collection since the previous OMB approval include: Updating the collection title, updating the TRIPwire User registration page, clarifying the revalidation burden, and adding a TRIPwire Questionnaire. Overall, these changes result in a decrease in burden estimates and costs.

This is a revision and renewal of an information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Technical Resource for Incident Prevention (TRIPwire) User Registration and Questionnaire.

OMB Control Number: 1670–0028.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector Individuals.

Number of Annualized Respondents: 4,333.

Estimated Time per Respondent: 0.17 hours, 0.017 hours, 0.083 hours.

Total Annualized Burden Hours: 422 hours.

Total Annualized Respondent Opportunity Cost: $13,736.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $7,447.

Larry L. Willis,

Business Management Branch Chief.

[FR Doc. 2019–18379 Filed 8–26–19; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0022]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Immigration Bond

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until October 28, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0022 in the body of the letter, the agency name and Docket ID ICEB–2019–0008. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2019–0008;

(2) *Mail:* Submit written comments to DHS, ICE, Office of the Chief Information Officer (OCIO), PRA Clearance, Washington, DC 20536–5800.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: Justin Gellert (202–732–5462), *justin.c.gellert@ice.dhs.gov,* ERO Bond Management Unit, U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Immigration Bond.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: ICE Form I–352; U.S. Immigration and Customs Enforcement

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or Households; Business or other for-profit. The data collected on this collection instrument is used by ICE to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond. Sureties have the capability of accessing, completing and submitting delivery, voluntary departure, and order

of supervision bonds electronically through ICE's eBonds system which encompasses the I–352, while individuals are still required to complete the bond form manually and sureties will be required to submit maintenance of status and departure bonds manually.

(5) An estimate of the total number of responses and the amount of time estimated for an average respondent to respond: ICE estimates a total of 61,722 responses at 30 minutes (.50 hours) per response. ICE calculated the number of estimated responses by adding together the number of bonds that were posted using Form I–352 in Fiscal Year 2018 (58,734) with the maximum number of maintenance of status and departure bonds that the Department of State expects may be required for non-immigrants in the next fiscal year (2,988). The burden estimate includes the time required to review instructions, gather and maintain data needed, to complete, and to file the collection of information.

(6) An estimate of the total public burden (in hours) associated with the collection: 30,861 annual burden hours, estimated by multiplying the total number of responses, 61,722, by the average response burden of .50 hours. This estimate is composed of 8,689 responses from surety companies, and 53,033 aliens posting cash bonds resulting in a total of 61,722 responses.

(7) Total public cost of responding is $743,670. This total cost is composed of the burden to surety companies estimated using the average wage for insurance sales agents and the burden to aliens using the average wage of unskilled workers and production works plus fringe benefits estimated to be $47.58 per hour and $20.25 per hour respectively.[1]

(8) The total Government costs is $10,422,995, which includes printing costs and the collection and processing burden for each form. The total printing costs equates to $46,292 which is estimated by multiplying the number of responses (61,722) by the cost of printing two forms per response for $0.75. The collection and processing of each form takes an average of 6 hours, and will be conducted by a government employee with an average hourly wage plus overhead estimated to be $28.02.[2] The total cost of collecting and processing for the government is $10,376,703.

Overview of Proposed Revisions to the Bond Form and to Bond Procedures. Form No. I–352, Immigration Bond, has not been substantively revised since 2008. Changes to the form are now necessary because U.S. Citizenship and Immigration Services (USCIS) intends to issue a different form for public charge bonds and Form I–352 will no longer be used for that type of bond. Additionally, ICE is adding language to explain the terms and conditions of maintenance of status and departure bonds. Maintenance of status and departure bonds were previously accepted by the former Immigration and Naturalization Service (INS) on earlier versions of the Form I–352, and ICE may accept this type of bond when required for non-immigrants visiting the United States. The proposed revisions to the bond form also seek to clarify when a bond obligor's liability attaches and the events that trigger cancellation of a bond, and to notify the public that ICE will no longer issue receipts on Form I–305 for bonds secured by a cash deposit.

Cash Bond Deposit: ICE has revised the Instructions to state that it will accept a certified check, a cashier's check, or a money order (a ''cash equivalent'') as a deposit from a cash bond obligor.

eBONDS Power of Attorney: Based on the development of the eBONDS system, ICE has revised the Instructions to state that surety bonds issued using the eBONDS system may be accompanied by a power of attorney executed by a surety company for use in the eBONDS system.

General Terms and Conditions: Because certain jurisdictions do not honor ICE detainers, the General Terms and Conditions governing the bond have been revised to reflect that a bond will not be cancelled simply because ICE is on notice of the detention of the bonded alien for 30 or more days pursuant, or prior, to a conviction by local, state, or federal authorizes. The revised General Terms and Conditions clarify that a delivery bond may not be breached when the bonded alien is in local, state, or federal custody on the date the obligor is scheduled to produce the alien. The bond will remain in effect in this situation unless ICE later takes the bonded alien into its custody directly from local, state, or federal authorities, in which case the bond will be cancelled.

Address to Use for Notice Purposes: Part A of Form I–352 has been revised to delete the boxes indicating the address to use for notice purposes.

Liability Attaches Upon Execution of the Bond: Part C of Form I–352 has been revised to reflect that the surety's liability attaches upon execution of the bond form. References to the alien becoming a public charge have been omitted and the revisions clarify that the face amount of the bond is forfeited or becomes due when the breach determination is administratively final.

Form I–352 No Longer Used for Public Charge Bonds: Previous Paragraph G(2) has been omitted from Form I–352 in anticipation of USCIS using a different form for issuance of public charge bonds.

Maintenance of Status and Departure Bonds: Paragraph G(4) has been added to explain the terms and conditions for Maintenance of Status and Departure Bonds. The former INS accepted maintenance of status and departure bonds using prior versions of Form I–352 when a bond was required for a non-immigrant traveling to the United States.

Deletion of Paragraphs H–J: Because U.S. bonds, notes and cash are no longer accepted as deposits to secure cash bonds, ICE has eliminated Paragraphs H–J of Form I–352 and any references to those paragraphs because they are no longer necessary.

Forms I–305 and I–395 No Longer Used in Conjunction with Cash Bonds: Before the advent of electronic signatures, ICE issued a receipt on Form I–305 to the cash bond obligor documenting the amount of the bond deposit. ICE required the obligor to submit the original of Form I–305 with the bond cancellation notice before obtaining a refund of the cash bond deposit. If the obligor lost the receipt, the obligor could submit an affidavit on Form I–395 in lieu of the receipt to claim the cash bond deposit. ICE has now determined that issuance of Form I–305 is unnecessary and is unduly

[1] The hourly wage rate for an insurance sales agent is $32.64 as reported by the Bureau of Labor Statistics (BLS) in the May 2018 National Occupational Employment and Wage Estimates United States, *https://www.bls.gov/oes/current/oes_nat.htm#41-3021.* The hourly wage rate for unskilled labor is represented by the national average of state minimum wage rates, $8.94. See Consolidated Minimum Wage Table, June 1, 2019, *https://www.dol.gov/whd/minwage/mw-consolidated.htm.* The hourly wage rate for manufacturing labor is represented by the average hourly wage for production occupations, $18.84. See All Production Occupations, May 2018 National Occupational Employment and Wage Estimates United States, *https://www.bls.gov/oes/current/oes_nat.htm#51-0000.* Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, All workers, *https://www.bls.gov/news.release/ecec.t01.htm.* Wages and salaries are 68.6 percent of total compensation.

[2] The hourly rate is an average of a General Schedule Grade 7 Step 5, and a Grade 9 Step 1, plus the average national locality adjustment of 21.48 percent. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/saltbl.pdf.* An overhead rate of 12 percent was added to reflect the indirect expenses as reported in OMB Circular A76, *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76_incl_tech_correction.pdf.*

burdensome. For bonds posted on the newly revised bond form, ICE will no longer require cash bond obligors to submit Form I–305 or Form I–395 after a bond has been cancelled and will issue refunds of bond deposits to the individual or entity identified in ICE records as the individual or entity entitled to receive the refund without requiring Form I–305 or Form I–395 to be submitted.

Dated: August 22, 2019.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2019–18431 Filed 8–26–19; 8:45 am]

BILLING CODE 9111–28–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1107]

Certain LED Lighting Devices and Components Thereof; Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order (''GEO'') denying entry of certain LED lighting devices and components thereof. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2018, based on a complaint filed on behalf of Fraen Corporation (''Fraen'') of Reading, Massachusetts. 83 FR 15399–15400 (Apr. 10, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED lighting devices and components thereof by reason of infringement of one or more claims of U.S. Patent No. 9,411,083 (''the '083 patent'') and U.S. Patent No. 9,772,499 (''the '499 patent''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents Chauvet & Sons, LLC of Sunrise, Florida; ADJ Products, LLC of Los Angeles, California; Elation Lighting, Inc. of Los Angeles, California; Golden Sea Professional Equipment Co., Ltd. of Guangdong, China; Artfox USA, Inc. of City of Industry, California; Artfox Electronics Co., Ltd. of Guangdong, China; Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co., Ltd. of Guangdong, China; Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine of Guangdong, China; Guangzhou Flystar Lighting Technology Co., Ltd. of Guangdong, China; and Wuxi Changsheng Special Lighting Apparatus Factory d/b/a Roccer of Jiangsu, China. *Id.* The Office of Unfair Import Investigations (''OUII'') is also participating in the investigation. *Id.*

On June 13, 2018, the ALJ issued an initial determination terminating Chauvet & Sons, LLC from the investigation on the basis of a license agreement. Order No. 14 at 1 (June 13, 2018), *unreviewed,* Notice (July 9, 2018).

On July 12, 2018, the ALJ issued an initial determination terminating ADJ Products, LLC and Elation Lighting, Inc. from the investigation on the basis of a license agreement. Order No. 17 at 1 (July 12, 2018), *unreviewed,* Notice (Aug. 8, 2018). In the same initial determination, the ALJ terminated Golden Sea Professional Equipment Co., Ltd. from the investigation based on the provisions of 19 CFR 210.21(a). *Id.*

On July 20, 2018, the ALJ issued an initial determination terminating Artfox USA, Inc. from the investigation on the basis of a license agreement. Order No. 18 at (July 20, 2018), *unreviewed,* Notice (Aug. 14, 2018). In the same initial determination, the ALJ terminated Artfox Electronics Co., Ltd. from the investigation based on the provision of 19 CFR 210.21(a). *Id.*

On August 28, 2018, the ALJ issued an initial determination (''ID'') finding the remaining respondents—Fine Art, E-Shine, Flystar, and Roccer (collectively, ''defaulting respondents'')—in default for failure to respond to the complaint, notice of investigation, and her order to show cause why they should not be found in default. Order No. 20 (Aug. 28, 2018), *unreviewed,* Notice (Sep. 17, 2018).

On September 14, 2018, Fraen moved for summary determination of violation of section 337 by the defaulting respondents. In addition, Fraen requested a recommended determination for the Commission to issue a general exclusion order and set a bond at 100 percent. On September 26, 2018, OUII filed a response in support of Fraen's motion and requested remedy.

On May 16, 2019, the ALJ issued the subject ID granting Fraen's motion for summary determination of violation of section 337 by the defaulting respondents. Specifically, the ALJ found, *inter alia,* that Fraen established infringement of claim 1 of the '083 patent and claim 1 of the '499 patent; that Fraen established that the importation requirement of 337(a)(1)(B)(i) is satisfied as to each defaulting respondent and each accused product; and that Fraen satisfied both the technical and economic prongs of the domestic industry requirement. The ALJ also included her recommendation that the Commission issue a general exclusion order and impose a 100 percent bond during the presidential review period. No petitions for review were filed.

On June 28, 2019, the Commission issued a Notice stating that the Commission determined to review the ID in part and, on review, to take no position on whether Fraen satisfied the domestic industry requirement under subparagraphs (A) and (C) of section 337(a)(3). 84 FR 32218. The Commission's determination resulted in finding a violation of section 337. *Id.* at 32219. The Notice also requested written submissions on remedy, the public interest, and bonding. *See id.* at 32219–20.

On July 15, 2019, Fraen submitted a brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO and set a bond of 100 percent during the Presidential review period. Fraen did not request a cease and desist order. On the same day, OUII also submitted a brief on remedy, the public interest, and bonding, supporting the ALJ's recommendation to issue a GEO and impose a bond of 100 percent. On July 22, 2019, both Fraen and OUII submitted replies to the other's opening brief. No other submissions were filed in response to the Notice.

The Commission finds that the statutory requirements for relief under section 337(d)(2) are met with respect to the defaulting respondents. *See* 19 U.S.C. 1337(d)(2). In addition, the Commission finds that the public interest factors enumerated in section 337(d)(1) do not preclude issuance of statutory relief. *See id.* 1337(d)(1).

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain LED lighting devices and components thereof that infringe claim 1 of the '083 patent or claim 1 of the '499 patent. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: August 21, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–18409 Filed 8–26–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–618–619 and 731–TA–1441–1444 (Final)]

Carbon and Alloy Steel Threaded Rod From China, India, Taiwan, and Thailand; Scheduling of the Final Phase of Countervailing and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–618–619 and 731–TA–1441–1444 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of carbon and alloy steel threaded rod from China, India, Taiwan, and Thailand, provided for in subheading 7318.15.50 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: August 7, 2019.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (202–205–3386) or Jessica Oliva Figueroa (202–205–3432), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''. . . carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to these investigations are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554–36, ASTM F1554–55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of these investigations, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of these investigations whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of these investigations are: (1) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with our without other elements.

Excluded from the scope of the antidumping investigation on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on Certain Steel Threaded Rod from the People's Republic of China. See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order, 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of these investigations is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture. Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.''

Background.—The final phase of these investigations is being scheduled

pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China, India, Taiwan, and Thailand of carbon and alloy steel threaded rod, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on February 21, 2019, by Vulcan Steel Products Inc., Pelham, Alabama.

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 and C (19 CFR part 207).

Participation in the investigations 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 the final phase of these investigations 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, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations 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 final phase of these investigations will be placed in the nonpublic record on October 1, 2019, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, October 15, 2019, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 10, 2019. 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 participate in a prehearing conference to be held on October 11, 2019, at the U.S. International Trade Commission Building, if deemed necessary. 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 who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 8, 2019. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 22, 2019. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 22, 2019. On November 6, 2019, 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 November 8, 2019, but such final comments must not contain new factual information and must otherwise comply with section 207.30 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 E-Filing,* available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

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 investigations must be served on all other parties to the investigations (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.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 22, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–18421 Filed 8–26–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Nanosyn, Inc

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 28, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

In accordance with 21 CFR 1301.33(a), this is notice that on July 17, 2019, Nanosyn Inc., 3331 Industrial Drive, Suite B, Santa Rosa, California 95403–2062 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled Substance	Drug Code	Schedule
Fentanyl	9801	II
Oxymorphone	9652	II

The company is a contract manufacturer. At the request of the company's customers, it manufactures derivatives of controlled substances in bulk form.

Dated: August 9, 2019.

Neil D. Doherty,

Acting Assistant Administrator.

[FR Doc. 2019–18454 Filed 8–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Akorn, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 26, 2019. Such persons may also file a written request for a hearing on the application on or before September 26, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 7, 2019, Akorn Inc., 1222 West Grand Avenue Decatur, Illinois 62522–1412 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import the above listed controlled substance for research purposes.

Dated: August 9, 2019.

Neil D. Doherty,

Acting Assistant Administrator.

[FR Doc. 2019–18453 Filed 8–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Cerilliant Corporation

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before September 26, 2019. Such persons may also file a written request for a hearing on the application on or before September 26, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 9, 2019, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4-FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Methaqualone	2565	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I

Controlled substance	Drug code	Schedule
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	7048	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine	7348	I
Marihuana	7360	I
Parahexyl	7374	I
Mescaline	7381	I
2C-T-2 (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	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
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
N-Benzylpiperazine	7493	I
4-MePPP (4-Methyl-alphapyrrolidinopropiophenone)	7498	I
2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C-H 2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C-I 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C-C 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C-N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C-T-4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
25B-NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	I
25C-NBOMe (2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	I
25I-NBOMe (2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Heroin	9200	I
Morphine-N-oxide	9307	I
Normorphine	9313	I
Pholcodine	9314	I
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I

Controlled substance	Drug code	Schedule
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Dextromoramide	9613	I
Dipipanone	9622	I
Hydroxypethidine	9627	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Racemoramide	9645	I
Trimeperidine	9646	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
Tilidine	9750	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Thiofentanyl	9835	I
Methamphetamine	1105	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Dihydrocodeine	9120	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Levomethorphan	9210	II
Levorphanol	9220	II
Meperidine	9230	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Levo-alphacetylmethadol	9648	II
Noroxymorphone	9668	II
Racemethorphan	9732	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II

The company plans to import the listed controlled substances for the manufacture of analytical reference standards and distribution to their research and forensic customers. Approval of permit application will occur only when the registrant's activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: August 9, 2019.

Neil D. Doherty,

Acting Assistant Administrator.

[FR Doc. 2019–18455 Filed 8–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Applications: Bulk Manufacturers of Marihuana

ACTION: Notice of applications.

SUMMARY: The Drug Enforcement Administration (DEA) is providing

notice of certain applications it has received from entities applying to be registered to manufacture in bulk a basic class of controlled substances listed in schedule I. Prior to making decisions on these pending applications, DEA intends to promulgate regulations that govern the program of growing marihuana for scientific and medical research under DEA registration. In addition, this notice informs applicants that they may withdraw their applications if they no longer need to obtain a registration because of the recent amendments made by the Agriculture Improvement Act of 2018 to the definition of marihuana to no longer include ''hemp'' as defined by law.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefor, may file written comments on or objections to the issuance of the proposed registration on or before October 28, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152–2639. To ensure proper handling of comments, please reference ''Docket No. DEA–392'' in all correspondence, including attachments.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entities identified below have applied for registration as bulk manufacturers of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic classes, and applicants therefor, may file written comments on or objections to the issuance of the requested registrations, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the applications submitted.

The applicants plan to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA-registered researchers. If their applications for registration are granted, the registrants would not be authorized to conduct other activity under those registrations, aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the applications for registration as bulk manufacturers for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

In particular, in accordance with the criteria specified in 21 U.S.C. 823(a), DEA is required, among other things, to maintain ''effective controls against diversion . . . by limiting the . . . bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes.'' 21 U.S.C. 823(a); *see* Lyle E. Craker;—Denial of Application, 74 FR 2101, 2118–23, 2127–33 (2009) (''[A]n applicant seeking to become registered to bulk manufacture a schedule I or II controlled substance bears the burden of demonstrating that the existing registered bulk manufacturers of a given schedule I or II controlled substance are unable to produce an adequate and uninterrupted supply of that substance under adequately competitive conditions.''), *pet. for rev. denied, Craker* v. *DEA,* 714 F.3d 17, 27–29 (1st Cir. 2013); *see also* Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States, 81 FR 53846, 53847 (Aug. 12, 2016) (''As subsection 823(a)(1) provides, DEA is obligated to register only the number of bulk manufacturers of a given schedule I or II controlled substance that is necessary to 'produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes.' '').

Thus, in accordance with the criteria of section 823(a), DEA anticipates evaluating the applications and, of those applications that it finds are compliant with relevant laws, regulations, and treaties, granting the number that the agency determines is necessary to ensure an adequate and uninterrupted supply of the controlled substances at issue under adequately competitive conditions. By registering these additional growers in accordance with the criteria of section 823(a), DEA anticipates that additional strains of marihuana will be produced and made available to researchers. This should facilitate research, advance scientific understanding about the effects of marihuana, and potentially aid in the development of safe and effective drug products that may be approved for marketing by the Food and Drug Administration.

The applicants noticed below applied to become registered with DEA to grow marihuana as bulk manufacturers subsequent to a 2016 DEA policy statement that provided information on how it intended to expand the number of registrations, and described in general terms the way it would oversee those additional growers. Therein, DEA recognized the need to move past the single grower system and register additional growers. DEA has received 33 pending applications, as listed below; the most recent was filed in May 2019. Because the size of the applicant pool is unprecedented in DEA's experience, the Agency has determined that adjustments to its policies and practices with respect to the marihuana growers program are necessary to fairly evaluate the applicants under the 823(a) factors, including 823(a)(1).

In addition, since publication of the 2016 policy statement, the Department of Justice, in consultation with other federal agencies, has been engaged in a policy review process to ensure that the marihuana growers program is consistent with applicable laws and treaties. That review process remains ongoing; however, it has progressed to the point where DEA is able to issue Notices of Application. Over the course of this policy review process, the Department of Justice has also determined that adjustments to DEA's policies and practices related to the marihuana growers program may be necessary. Accordingly, before DEA completes this evaluation and registration process, DEA intends to propose regulations in the near future that would supersede the 2016 policy statement and govern persons seeking to become registered with DEA to grow marihuana as bulk manufacturers, consistent with applicable law.

DEA notes that, as the result of a recent amendment to federal law, certain forms of cannabis no longer require DEA registration to grow or manufacture. The Agriculture Improvement Act of 2018, Public Law 115–334, which was signed into law on December 20, 2018, changed the definition of marihuana under the CSA. As amended, the definition of marihuana no longer includes ''hemp,'' which is defined as ''the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.'' 7 U.S.C. 1639*o*(1). Pursuant to the amended definition, cannabis plant material which contains 0.3 percent or less delta-9 tetrahydrocannabinol (THC) on a dry

weight basis is not a controlled substance and does not require a DEA registration to grow. Accordingly, if any of the below-listed applicants have applied for a DEA registration exclusively for the purpose of growing cannabis that contains no more than 0.3 percent delta-9 THC on a dry weight basis, including cannabis that contains cannabidiol (CBD) and falls below the delta-9 THC threshold, the applicants no longer require DEA registration for that purpose. If desired, these applicants may respond in writing with a request to withdraw their applications. Upon receipt of a request to withdraw an application that is received no later than November 1, 2019, DEA will refund all related application fees paid by the applicant.

In addition, any listed applicants who no longer wish to obtain registration for any other reason may also request to withdraw their application in writing, and DEA will refund all related application fees paid by the applicant, provided the withdrawal is received no later than November 1, 2019. Applicants who wish to withdraw their application may do so by sending a letter to: Drug Enforcement Administration, Attn: Regulatory/DRG, 8701 Morrissette Drive, Springfield, VA 22152–2639.

List of Applications Received

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on the following dates, the following entities applied to be registered as bulk manufacturers of the following basic classes of controlled substances:

Date	Applicant	Address	Controlled substance	Drug Code	Sch.
2/6/17	7218737 Delaware Inc	50 Otis Street, Westborough, MA 01581.	Marihuana	7360	I
5/11/17	A and C Laboratories	155 Federal Street, Suite 700, Boston, MA 02110.	Marihuana extract, Marihuana, Tetrahydrocannabinols.	7350, 7360, 7370	I
2/14/18	Abatin Cultivation Center	2146 Queens Chapel Rd., Washington, DC 20018.	Marihuana extract, Marihuana	7360	I
12/30/16.	Annac Medical Center LLC	5172 W Patrick Lane, Suite 100, Las Vegas, NV 89117–8911.	Marihuana extract, Marihuana	7350, 7360	I
1/4/18	Battelle Memorial Institute	1425 Plain City—Gorgesville Road, Bldg. JS–1–009, Powell, OH 43065–9647.	Marihuana, Tetrahydrocannabinols	7360, 7370	I
3/16/17	Biopharmaceutical Research Company, LLC.	11045 Commercial Parkway, Castroville, CA 95012–3209.	Marihuana extract	7350	I
11/2/16	Cannamed Pharmaceuticals, Inc	27120 Ocean Gateway, Salisbury, MD 21803.	Marihuana extract, Marihuana, Tetrahydrocannabinols.	7350, 7360, 7370	I
3/13/17	Columbia Care NY, LLC	Eastman Business Park, Bldg. 12, 4th Floor, 1669 Lake Ave., Rochester, NY 14615.	Marihuana extract	7350	I
5/3/18	Contract Pharmacal Corp	135 Adams Avenue, Hauppauge, NY 11788.	Marihuana extract, Marihuana, Tetrahydrocannabinols.	7350, 7360, 7370	I
8/2/17	Confederated Tribes of the Colville	P.O. Box 150, 21 Colville Street, Nespelem, WA 99155.	Marihuana,	7360	I
11/10/16.	Fraunhofer USA	Center for Molecular Biotechnology, 9 Innovation Way, Newark, DE 19711.	Marihuana extract	7350	I
7/31/14	Gary Gray DBA Complex Pharmacist Owner.	P.O. Box 2522, 1721 W Burrel Ave., Visalia, CA 93279–2522.	Marihuana, Tetrahydrocannabinols	7360, 7370	I
10/22/18.	GB Sciences, Inc. DBA GB Sciences Nevada, LLC.	3550 W Teco Ave., Las Vegas, NV 89118–6876.	Marihuana extract, Marihuana, Tetrahydrocannabinols.	7350, 7360, 7370	I
4/27/17	Green Leaf Inc	4614 Halibut Point Rd., Sitka, AK 99835.	Marihuana extract, Marihuana, Tetrahydrocannabinols.	7350, 7360, 7370	I
11/23/16.	Hawaii Agriculture Research Institute	94–340 Kunia Road, Kunia, HI 96759–0100.	Marihuana extract	7350	I
8/30/16	Hemp CBD LLC	190 Eagle Ford Dr., Pleasanton, TX 78064.	Marihuana, Tetrahydrocannabinols	7360, 7370	I
5/22/17	JT Medical, LLC	598 South Juniata St., Box 311, Lewistown, PA 17044–0311.	Marihuana extract, Marihuana	7350, 7360	I
5/5/17	Maridose LLC	23378 Barlake Dr., Boca Raton, FL 33433.	Marihuana, Tetrahydrocannabinols	7360, 7370	I
10/3/16	MCRGC LLC	811 Western Ave., Manchester, ME 04351.	Marihuana extract, Marihuana, Tetrahydrocannabinols.	7350, 7360, 7370	I
9/12/16	Medpharm Research, LLC	4880 Havana St., Denver, CO 80239.	Marihuana extract, Marihuana	7350, 7360	I
12/27/18.	MMJ Biopharma Cultivation	14930 Reflection Key Circle, Apt. 2511, Fort Myers, FL 33907.	Marihuana, Tetrahydrocannabinols	7360, 7370	I
1/17/17	Modern Pharmacy, LLC	123 Alton Rd., Miami Beach, FL 33139.	Marihuana extract, Marihuana	7350, 7360	I
4/5/17	National Center for Development of Natural Products.	The University of Mississippi, 135 Coy Waller Lab Complex, P.O. Box 1848, University, MS 38677.	Marihuana extract	7350	I

Date	Applicant	Address	Controlled substance	Drug Code	Sch.
5/2/19	Nuvue Pharma, LLC	4740 Dillion Drive, Pueblo, CO 81008–2112.	Marihuana	7360	I
3/31/17	Pharmacann LLC	1010 Lake St., 2nd Fl., Oak Park, IL 60301–1132.	Marihuana	7360	I
11/8/16	PS Patients Collective, Inc	36555 Bankside Drive, Cathedral City, CA 92234.	Marihuana, Tetrahydrocannabinols	7360, 7370	I
1/13/17	Scientific Botanical Pharmaceutical, Inc.	1225 W Deer Valley Rd., Phoenix, AZ 85027.	Marihuana extract, Marihuana, Tetrahydrocannabinols.	7350, 7360, 7370	I
11/29/16.	Scottsdale Research Institute	1225 W Deer Valley Rd., Phoenix, AZ 85027.	Marihuana extract	7350	I
10/3/16	The Giving Tree Wellness Center	21617 N 9th Avenue, Phoenix, AZ 85027.	Marihuana	7360	I
9/21/18	Trail Blazin' Productions	2005 Division St., Bellingham, WA 98226.	Marihuana	7360	I
2/21/17	Ultra Rich CBD	30 Rockcreek Rd., Orovada, NV 89425.	Marihuana extract	7350	I
11/1/17	University of California, Davis	One Shields Avenue, EH&S Hoagland Hall 276, Davis, CA 95616.	Marihuana	7360	I
2/22/17	University of Massachusetts	80 Campus Center Way, Amherst, MA 01003–9246.	Marihuana extract	7350	I

Dated: August 22, 2019.

Neil D. Doherty,

Acting Assistant Administrator, Deputy Assistant Administrator.

[FR Doc. 2019–18456 Filed 8–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Medical Support Notice—Part B

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''National Medical Support Notice—Part B,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 26, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1210-001* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the National Medical Support Notice—Part B information collection. Section 609 of the Employee Retirement Income Security Act (ERISA) and regulations at 29 CFR 2590.609–2 establish a National Medical Support Notice to provide group health benefits coverage pursuant to Qualified Medical Child Support Orders. Part B, Medical Support Notice to Plan Administrator, is a notice from an employer to a benefits plan administrator to implement coverage of children under ERISA covered group health plans. ERISA section 609(a) authorizes this information collection. *See* 29 U.S.C. 1169(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0113.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of

Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0113. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: National Medical Support Notice—Part B.

OMB Control Number: 1210–0113.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 425,444.

Total Estimated Number of Responses: 10,546,371.

Total Estimated Annual Time Burden: 878,864 hours.

Total Estimated Annual Other Costs Burden: $6,327,824.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 20, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–18337 Filed 8–26–19; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Access to Multiemployer Plan Information

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Access to Multiemployer Plan Information,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 26, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201906-1210-009* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Access to Multiemployer Plan Information information collection. This collection provides certain actuarial and financial information to multiemployer defined benefit-pension plan participants and beneficiaries, employee representatives, and any employer that has an obligation to contribute to such a plan. Employee Retirement Income Security Act of 1974 section 101(k) authorizes this information collection. *See* 29 U.S.C. 1021(k).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0131.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0131. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Access to Multiemployer Plan Information.

OMB Control Number: 1210–0131.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,636.

Total Estimated Number of Responses: 235,798.

Total Estimated Annual Time Burden: 30,379 hours.

Total Estimated Annual Other Costs Burden: $521,815.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 20, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–18338 Filed 8–26–19; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 26, 2019.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *fontaine.roslyn@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2019–046–C.

Petitioner: Jet Coal Co., Inc., One Oxford Centre, 301 Grant Street, Suite 4300, Pittsburgh, Pennsylvania 15219.

Mines: No. 8 Mine, MSHA I.D. No. 46–09018, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, within 150 feet of pillar workings and longwall faces.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, 75.1002(a), and 75.1200, use of the most practical and accurate surveying equipment is necessary. It is necessary to determine the exact location and extent of mine workings to ensure the safety of miners in active mines and to protect miners in future mines which may mine in close proximity to the active mines.

(2) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The operator may use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater within 150 feet of pillar workings or longwall faces subject to this petition:

—Sokkia CX–105

—TopCon 235

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The operator will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn further than 150 feet from pillar workings and longwall faces. All requirements of 30 CFR 75.323 will be complied with prior to entering within 150 feet of pillar workings or longwall faces.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings and longwall faces, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used within 150 feet of pillar workings or longwall faces when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment within 150 feet of pillar workings and longwall faces. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings or longwall faces. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, within 150 feet of pillar workings or longwall faces is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces. A record of the training will be kept with the other training records.

(r) If the petition is granted, the operator will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

(s) The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face

ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

Production may continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.

Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2019–047–C.

Petitioner: Jet Coal Co., Inc., One Oxford Centre, 301 Grant Street, Suite 4300, Pittsburgh, Pennsylvania 15219.

Mines: No. 8 Mine, MSHA I.D. No. 46–09018, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, in or inby the last open crosscut.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) The operator utilizes the continuous mining method. Accurate surveying is critical to the safety of the miners at the mine.

(3) Mechanical surveying equipment has been obsolete for a number of years. Such equipment of acceptable quality is not commercially available. Further, it is difficult, if not impossible, to have such equipment serviced or repaired.

(4) Electronic surveying equipment is, at a minimum, 8 to 10 times more accurate than mechanical equipment.

(5) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The operator may use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in or inby the last open crosscut, subject to this petition:

—Sokkia CX–105

—TopCon 235

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The operator will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used in or inby the last open crosscut will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut.

All requirements of 30 CFR 75.323 will be complied with prior to entering in or inby the last open crosscut.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment within in or inby the last open crosscut, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used in or inby the last open crosscut when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in or inby the last open crosscut. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air outby the last open crosscut. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in or inby the last open crosscut is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment in or inby the last open crosscut. A record of the training will be kept with the other training records.

(r) If the petition is granted, the operator will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

(s) The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used in or inby the last open crosscut, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

—On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

—Production may continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.

—Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

—If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

—Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the

surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

—All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

—The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2019–048–C.

Petitioner: Jet Coal Co., Inc., One Oxford Centre, 301 Grant Street, Suite 4300, Pittsburgh, Pennsylvania 15219.

Mines: No. 8 Mine, MSHA I.D. No. 46–09018, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, in return airways.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200(a), use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The operator may use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in return airways, subject to this petition:

—Sokkia CX–105

—TopCon 235

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The operator will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used in return airways will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used in return airways will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn out of return airways. All requirements of 30 CFR 75.323 will be complied with prior to entering in return airways.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment in return airways, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment in return airways, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used in return airways when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible

electronic surveying equipment in return airways. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air out of return airways. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment in return airways, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in return airways is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment in return airways. A record of the training will be kept with the other training records.

(r) If the petition is granted, the operator will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

(s) The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used in return airways, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

—On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

—Production may continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.

—Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

—If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

—Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

—All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

—The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Roslyn B. Fontaine,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2019–18375 Filed 8–26–19; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0013]

Lead in General Industry Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend OMB approval of the information collection requirements specified in the Lead in General Industry Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by October 28, 2019.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0013, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2012–0013) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (see 29 U.S.C. 657).

The purpose of the Lead in General Industry Standard (29 CFR 1910.1025) and the collection of information requirements is to reduce occupational lead exposure in general industry. Lead exposure can result in both acute and chronic effects and can be fatal in severe cases of lead toxicity. The standard contains the following collection of information requirements: Conducting worker exposure monitoring; notifying workers of their lead exposure levels; establishing, implementing and reviewing a written compliance program annually; labeling containers of contaminated protective clothing and equipment; providing medical surveillance to workers; providing examining physicians with specific information; notifying workers of their medical surveillance results (including medical examinations and biological monitoring) and of the option for multiple physician review; posting warning signs; establishing and maintaining exposure monitoring, medical surveillance, and medical removal records; and providing workers with access to these records. The records are used by employees, physicians, employers, and OSHA to determine the effectiveness of the employer's compliance efforts.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

The agency is requesting a burden hour adjustment increase of 41,297 (from 1,030,305 hours to 1,071,602 hours). The agency estimates an overall reduction in the number of covered employers (from 53,935 to 53,469) and a decrease in exposed workers (from 331,304 to 327,819), based on updated data. However, overall burden hours increased as a result of an increase in the estimated number of initial exposure monitorings, initial medical examinations, and initial information exchanges between employers and health care professionals. The primary factor contributing to the burden hour increase is an increase in the applied annual job turnover rate, resulting in a higher number of estimated new employees across the whole industry profile. In addition, the agency identified one new secondary smelting employer which contributed to the increase.

Due to the increase in the estimated initial exposure monitoring, initial medical examinations, as well as increased costs to perform biological

monitoring and medical examinations under the standard, there is an increase in total operation and maintenance costs of $74,218,567 (from $92,636,813 to $166,855,380).

III. Proposed Actions

Type of Review: Extension of a currently approved collection.

Title: Lead in General Industry Standard (29 CFR 1910.1025).

OMB Control Number: 1218–0092.

Affected Public: Business or other for-profits.

Number of Respondents: 53,469.

Frequency: On occasion; Quarterly; Bi-monthly; Semi-annually; Annually.

Average Time per Response: Various.

Estimated Number of Responses: 3,667,403.

Estimated Total Burden Hours: 1,071,602.

Estimated Cost (Operation and Maintenance): $166,855,380.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA–2012–0013) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350; TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on August 21, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–18376 Filed 8–26–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2018–0013]

Salini-Impregilo/Healy Joint Venture; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Salini-Impregilo/Healy Joint Venture for a Permanent Variance and Interim Order from provisions of OSHA standards that regulate work in compressed air environments and presents the agency's preliminary finding to grant the Permanent Variance. OSHA also announces the granting of an Interim Order. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicant a Permanent Variance based on the conditions specified in this application.

DATES: Submit comments, information, documents in response to this notice, and request for a hearing on or before September 26, 2019. The Interim Order described in this notice will become effective on August 27, 2019, and shall remain in effect until the completion of the Northeast Boundary Tunnel project for Washington, DC or the Interim Order is modified or revoked.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2018–0013, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2018–0013). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.*

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. You may also contact Kevin Robinson, Director Office of Technical Programs and Coordination Activities (OTPCA) at the below address.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.*

Copies of this ***Federal Register*** *notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at *http://www.osha.gov.*

Hearing requests. According to 29 CFR 1905.15, hearing requests must include: (1) A short and plain statement detailing how the proposed Variance would affect the requesting party; (2) a specification of any statement or representation in the Variance application that the commenter denies, and a concise summary of the evidence offered in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

SUPPLEMENTARY INFORMATION:

I. Notice of Application

OSHA's standards in subpart S of 29 CFR part 1926 govern underground construction, caissons, cofferdams, and compressed air. On October 19, 2017, Salini-Impregilo/Healy Joint Venture (''Salini'' or ''the applicant''), 2600 Independence Avenue SE, Washington, DC 20003, submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655) and 29 CFR 1905.11 (variances and other relief under section 6(d)) an application for a Permanent Variance from several provisions of the OSHA standard that regulates work in compressed air, 1926.803 of subpart S, and an Interim Order allowing it to proceed while OSHA considers the request for a Permanent Variance (OSHA–2018–0013–0001). This notice addresses Salini's application for a Permanent Variance and Interim Order for construction of the Northeast Boundary Tunnel Project in Washington, DC only and is not applicable to future Salini or Salini-related joint venture tunneling projects.

Specifically, this notice addresses Salini's application for a Permanent Variance and Interim Order from the provisions of the standard that: (1) Require the use of the decompression values specified in decompression tables in Appendix A of subpart S (29 CFR 1926.803(f)(1)); and (2) require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and (xvii), respectively).

OSHA has previously approved nearly identical provisions when granting several other very similar variances, as discussed in more detail in Section II. OSHA preliminarily concludes that the proposed variance is appropriate, grants an Interim Order temporarily allowing the proposed activity, and seeks comment on the proposed variance.

Background

The applicant is a contractor that works on complex tunnel projects using innovations in tunnel-excavation methods. The applicant's workers engage in the construction of tunnels using advanced shielded mechanical excavation techniques in conjunction with an earth pressure balanced micro-tunnel boring machine (EPBMTBM). Using shielded mechanical excavation techniques, in conjunction with precast concrete tunnel liners and backfill grout, EPBMTBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel face through various geologies, and isolate that pressure to the forward section (the working chamber) of the EPBMTBM.

Salini asserts that generally it bores tunnels using an EPBMTBM at levels below the water table through soft soils consisting of clay, silt, and sand. EPBMTBMs are capable of maintaining pressure at the tunnel face, and stabilizing existing geological conditions, through the controlled use of propel cylinders, a mechanically driven cutter head, bulkheads within the shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. The forward-most portion of the EPBMTBM is the working chamber, and this chamber is the only pressurized segment of the EPBMTBM. Within the shield, the working chamber consists of two sections: The forward working chamber and the staging chamber. The forward working chamber is immediately behind the cutter head and tunnel face. The staging chamber is behind the forward working chamber and between the man-lock door and the entry door to the forward working chamber.

The EPBMTBM has twin man-locks located between the pressurized working chamber and the non-pressurized portion of the machine. Each man-lock has two compartments. This configuration allows workers to access the man-locks for compression and decompression, and medical personnel to access the man-locks if required in an emergency.

The applicant will pressurize the working chamber to the level required to maintain a stable tunnel face, which for this project Salini estimates will be up to a pressure not exceeding 50 pounds per square in gauge (p.s.i.g.).[1] Pressure in the staging chamber ranges from atmospheric (no increased pressure) to a maximum pressure equal to the pressure in the forward working chamber.

Salini employs specially trained personnel for the construction of the tunnel. To keep the machinery working effectively, Salini asserts that these workers must periodically enter the excavation working chamber of the EPBMTBM to perform hyperbaric interventions during which workers would be exposed to air pressures up to 50 p.s.i.g., which does not exceed the maximum pressure specified by the existing OSHA standard at 29 CFR 1926.803(e)(5). These interventions consist of conducting inspections or maintenance work on the cutter-head structure and cutting tools of the EPBMTBM, such as changing replaceable cutting tools and disposable wear bars, and, in rare cases, repairing structural damage to the cutter head. These interventions are the only time that workers are exposed to compressed air. Interventions in the working chamber (the pressurized portion of the EPBMTBM) take place only after halting tunnel excavation and preparing the machine and crew for an intervention.

During interventions, workers enter the working chamber through one of the twin man-locks that open into the staging chamber. To reach the forward part of the working chamber, workers pass through a door in a bulkhead that separates the staging chamber from the forward working chamber. The manlocks and the working chamber are designed to accommodate three people, which is the maximum crew size allowed under the proposed variance. When the required decompression times are greater than work times, the twin man-locks allow for crew rotation.

[1] The applicant originally requested a Variance to work up to pressures not exceeding 58 p.s.i.g., which would have exceeded OSHA's prohibition on pressures that exceed 50 p.s.i.g. (29 CFR 1926.803(e)(5)). The application was amended to estimate that will be up to pressure not exceeding 50 p.s.i.g. The revision to the application can be found in the docket at OSHA–2018–003–0004.

The decompression tables in Appendix A of subpart S of part 1926 express the maximum working pressures as pounds per square inch gauge (p.s.i.g.), with a maximum working pressure of 50 p.s.i.g. Therefore, throughout this notice, OSHA expresses the 50 p.s.i. value specified by § 1926.803(e)(5) as 50 p.s.i.g., consistent with the terminology in Appendix A, Table 1 of subpart S.

During crew rotation, one crew can be compressing or decompressing while the second crew is working. Therefore, the working crew always has an unoccupied man-lock at its disposal.

Salini asserts that these innovations in tunnel excavation have greatly reduced worker exposure to hazards of pressurized air work because they have eliminated the need to pressurize the entire tunnel for the project and would thereby reduce the number of workers exposed, as well as the total duration of exposure, to hyperbaric pressure during tunnel construction. These advances in technology substantially modified the methods used by the construction industry to excavate subaqueous tunnels compared to the caisson work regulated by the current OSHA compressed-air standard for construction at 29 CFR 1926.803.

In addition to the reduced exposures resulting from the innovations in tunnel-excavation methods, Salini asserts that innovations in hyperbaric medicine and technology improve the safety of decompression from hyperbaric exposures. These procedures, however, would deviate from the decompression process that OSHA requires for construction in 29 CFR 1926.803(f)(1) and the decompression tables in Appendix A of 29 CFR 1926, subpart S. Nevertheless, according to Salini, their use of decompression protocols incorporating oxygen is more efficient, effective, and safer for tunnel workers than compliance with the decompression tables specified by the existing OSHA standard.

Salini therefore believes its workers will be at least as safe under its proposed alternatives as they would be under OSHA's standard because of the reduction in number of workers and duration of hyperbaric exposures, better application of hyperbaric medicine, and the development of a project-specific Hyperbaric Operations Manual (HOM) that requires specialized medical support and hyperbaric supervision to provide assistance to a team of specially trained man-lock attendants and hyperbaric or compressed-air workers (CAWs).

Based on an initial review of Salini's application for a Permanent Variance and Interim Order for the construction of the Northeast Boundary Tunnel Project in Washington, DC, OSHA has preliminarily determined that Salini proposed an alternative that would provide a workplace at least as safe and healthful as that provided by the standard.

II. The Variance Application

Pursuant to the requirements of OSHA's variance regulations, the applicant certifies that it provided employee representatives of affected workers with a copy of the variance application.[2] The applicant also certifies that it notified its workers of the variance application by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed its workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

A. OSHA History of Approval of Nearly Identical Variance Requests

OSHA has previously approved several nearly identical variances involving the same types of tunneling equipment used for similar projects. OSHA notes that it granted three subaqueous tunnel construction Permanent Variances from the same provisions of OSHA's compressed-air standard (29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii)) that are the subject of the present application: (1) Impregilo, Healy, Parsons, Joint Venture (IHP JV) for the completion of the Annacostia River Tunnel in Washington, DC (80 FR 50652 (August 20, 2015)); (2) Traylor JV for the completion of the Blue Plains Tunnel in Washington, DC (80 FR 16440 (March 27, 2015)); and (3) Tully/OHL USA Joint Venture for the completion of the New York Economic Development Corporation's New York Siphon Tunnel project (79 FR 29809) (May 23, 2014)). The proposed alternate conditions in this notice are nearly identical to the alternate conditions of the previous Permanent Variances.[3] OSHA is not aware of any injuries or other safety issues that arose from work performed under these conditions in accordance with the previous variances.

B. Variance From Paragraph (f)(1) of 29 CFR 1926.803, Requirement To Use OSHA Decompression Tables

OSHA's compressed-air standard for construction requires decompression in accordance with the decompression tables in Appendix A of 29 CFR 1926, subpart S (see 29 CFR 1926.803(f)(1)). As an alternative to the OSHA decompression tables, the applicant proposes to use newer decompression schedules (the 1992 French Decompression Tables) that rely on staged decompression and supplement breathing air used during decompression with air or oxygen (as appropriate).[4] The applicant asserts decompression protocols using the 1992 French Decompression Tables for air or oxygen as specified by the Northeast Boundary Tunnel Project-specific HOM are safer for tunnel workers than the decompression protocols specified in Appendix A of 29 CFR 1926, subpart S. Accordingly, the applicant would commit to following the decompression procedures described in that HOM, which would require it to follow the 1992 French Decompression Tables to decompress compressed-air worker (CAWs) after they exit the hyperbaric conditions in the working chamber.

Depending on the maximum working pressure and exposure times, the 1992 French Decompression Tables provide for air decompression with or without oxygen. Salini asserts that oxygen decompression has many benefits, including (1) keeping the partial pressure of nitrogen in the lungs as low as possible; (2) keeping external pressure as low as possible to reduce the formation of bubbles in the blood; (3) removing nitrogen from the lungs and arterial blood and increasing the rate of nitrogen elimination; (4) improving the quality of breathing during decompression stops so that workers are less tired and to prevent bone necrosis; (5) reducing decompression time by about 33 percent as compared to air decompression; and (6) reducing inflammation.

In addition, the project-specific HOM requires a physician certified in hyperbaric medicine to manage the medical condition of CAWs during hyperbaric exposures and decompression. A trained and

[2] See the definition of ''Affected employee or worker'' in section V. D.

[3] The other variances allowed further deviation from OSHA standards by permitting employee exposures above 50 p.s.i.g. based on the composition of the soil and the amount of water that will be above the tunnel for various sections of this project. The current proposed variance includes substantively the same safeguards as the variances that OSHA granted previously even though employees will not be exposed to the higher pressures.

[4] In 1992, the French Ministry of Labour replaced the 1974 French Decompression Tables with the 1992 French Decompression Tables, which differ from OSHA's decompression tables in Appendix A by using: (1) Staged decompression as opposed to continuous (linear) decompression; (2) decompression tables based on air or both air and pure oxygen; and (3) emergency tables when unexpected exposure times occur (up to 30 minutes above the maximum allowed working time).

experienced man-lock attendant is also required to be present during hyperbaric exposures and decompression. This man-lock attendant is to operate the hyperbaric system to ensure compliance with the specified decompression table. A hyperbaric supervisor (competent person), who is trained in hyperbaric operations, procedures, and safety, directly oversees all hyperbaric interventions and ensures that staff follow the procedures delineated in the HOM or by the attending physician.

C. Variance From Paragraph (g)(1)(iii) of 29 CFR 1926.803, Automatically Regulated Continuous Decompression

The applicant is applying for a Permanent Variance from the OSHA standard at 29 CFR 1926.803(g)(1)(iii), which requires automatic controls to regulate decompression. As noted above, the applicant is committed to conducting the staged decompression according to the 1992 French Decompression Tables under the direct control of the trained man-lock attendant and under the oversight of the hyperbaric supervisor.

Breathing air under hyperbaric conditions increases the amount of nitrogen gas dissolved in a CAW's tissues. The greater the hyperbaric pressure under these conditions and the more time spent under the increased pressure, the greater the amount of nitrogen gas dissolved in the tissues. When the pressure decreases during decompression, tissues release the dissolved nitrogen gas into the blood system, which then carries the nitrogen gas to the lungs for elimination through exhalation. Releasing hyperbaric pressure too rapidly during decompression can increase the size of the bubbles formed by nitrogen gas in the blood system, resulting in decompression illness (DCI), commonly referred to as ''the bends.'' This description of the etiology of DCI is consistent with current scientific theory and research on the issue (see footnote 12 in this notice discussing a 1985 NIOSH report on DCI).

The 1992 French Decompression Tables proposed for use by the applicant provide for stops during worker decompression (*i.e.,* staged decompression) to control the release of nitrogen gas from tissues into the blood system. Studies show that staged decompression, in combination with other features of the 1992 French Decompression Tables such as the use of oxygen, result in a lower incidence of DCI than the use of automatically regulated continuous decompression.[5] In addition, the applicant asserts that staged decompression administered in accordance with its HMO is at least as effective as an automatic controller in regulating the decompression process because the HMO includes a hyperbaric supervisor (a competent person experienced and trained in hyperbaric operations, procedures, and safety) who directly supervises all hyperbaric interventions and ensures that the man-lock attendant, who is a competent person in the manual control of hyperbaric systems, follows the schedule specified in the decompression tables, including stops.

D. Variance From Paragraph (g)(1)(xvii) of 29 CFR 1926.803, Requirement of Special Decompression Chamber

The OSHA compressed-air standard for construction requires employers to use a special decompression chamber of sufficient size to accommodate all CAWs being decompressed at the end of the shift when total decompression time exceeds 75 minutes (see 29 CFR 1926.803(g)(1)(xvii)). Use of the special decompression chamber enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

Space limitations in the EPBMTBM do not allow for the installation and use of an additional special decompression lock or chamber. The applicant proposes that it be permitted to rely on the man-locks and staging chamber in lieu of adding a separate, special decompression chamber. Because only a few workers out of the entire crew are exposed to hyperbaric pressure, the man-locks (which, as noted earlier, connect directly to the working chamber) and the staging chamber are of sufficient size to accommodate all of the exposed workers during decompression. The applicant uses the existing man-locks, each of which adequately accommodates a three-member crew for this purpose when decompression lasts up to 75 minutes. When decompression exceeds 75 minutes, crews can open the door connecting the two compartments in each man-lock (during decompression stops) or exit the man-lock and move into the staging chamber where additional space is available. The applicant asserts that this alternative arrangement is as effective as a special decompression chamber in that it has sufficient space for all the CAWs at the end of a shift and enables the CAWs to move about and flex their joints to prevent neuromuscular problems.

III. Agency Preliminary Determinations

After reviewing the proposed alternatives OSHA preliminarily determined that the applicants proposed alternatives on the whole, subject to the conditions in the request and imposed by this Interim Order, provide measures that are as safe and healthful as those required by the cited OSHA standards addressed in section II of this document.

In addition, OSHA has preliminarily determined that each of the following alternatives are at least as effective as the specified OSHA requirements:

A. 29 CFR 1926.803(f)(1)

Salini has proposed to implement, equally effective alternative measures to the requirement in 29 CFR 1926.803(f)(1) for compliance with OSHA's decompression tables. The HOM specifies the procedures and personnel qualifications for performing work safely during the compression and decompression phases of interventions. The HOM also specifies the decompression tables the applicant proposes to use (the 1992 French Decompression Tables). Depending on the maximum working pressure and exposure times during the interventions, the tables provide for decompression using air, pure oxygen, or a combination of air and oxygen. The decompression tables also include delays or stops for various time intervals at different pressure levels during the transition to atmospheric pressure (*i.e.,* staged decompression). In all cases, a physician certified in hyperbaric medicine will manage the medical condition of CAWs during decompression. In addition, a trained and experienced man-lock attendant,

[5] See, *e.g.,* Dr. Eric Kindwall, EP (1997), Compressed air tunneling and caisson work decompression procedures: Development, problems, and solutions. *Undersea and Hyperbaric Medicine,* 24(4), pp. 337–345. This article reported 60 treated cases of DCI among 4,168 exposures between 19 and 31 p.s.i.g. over a 51-week contract period, for a DCI incidence of 1.44% for the decompression tables specified by the OSHA standard. Dr. Kindwall notes that the use of automatically regulated continuous decompression in the Washington State safety standards for compressed-air work (from which OSHA derived its decompression tables) was at the insistence of contractors and the union, and against the advice of the expert who calculated the decompression table and recommended using staged decompression. Dr. Kindwall then states, ''Continuous decompression is inefficient and wasteful. For example, if the last stage from 4 p.s.i.g. . . . to the surface took 1h, at least half the time is spent at pressures less than 2 p.s.i.g. . . . , which provides less and less meaningful bubble suppression . . . .'' In addition, Dr. Kindwall addresses the continuous-decompression protocol in the OSHA compressed-air standard for construction, noting that ''[a]side from the tables for saturation diving to deep depths, no other widely used or officially approved diving decompression tables use straight line, continuous decompressions at varying rates. Stage decompression is usually the rule, since it is simpler to control.''

experienced in recognizing decompression sickness or illnesses and injuries, will be present. Of key importance, a hyperbaric supervisor (competent person), trained in hyperbaric operations, procedures, and safety, will directly supervise all hyperbaric operations to ensure compliance with the procedures delineated in the project-specific HOM or by the attending physician.

As it did when granting the three previous variances to IHP JV, Traylor JV, and Tully JV, OSHA conducted a review of the scientific literature and concluded that the alternative decompression method (*i.e.,* the 1992 French Decompression Tables) Salini proposed would be at least as safe as the decompression tables specified by OSHA when applied by trained medical personnel under the conditions that would be imposed by the proposed variance.

Some of the literature even indicates that it may be safer, concluding that decompression performed in accordance with these tables resulted in a lower occurrence of DCI than decompression conducted in accordance with the decompression tables specified by the standard. For example, H.L. Anderson studied the occurrence of DCI at maximum hyperbaric pressures ranging from 4 p.s.i.g. to 43 p.s.i.g. during construction of the Great Belt Tunnel in Denmark (1992–1996).[6] This project used the 1992 French Decompression Tables to decompress the workers during part of the construction. Anderson observed 6 DCI cases out of 7,220 decompression events, and reported that switching to the 1992 French Decompression tables reduced the DCI incidence to 0.08% compared to a previous incidence rate of 0.14%. The DCI incidence in the study by H.L. Andersen is substantially less than the DCI incidence reported for the decompression tables specified in Appendix A.

OSHA found no studies in which the DCI incidence reported for the 1992 French Decompression Tables were higher than the DCI incidence reported for the OSHA decompression tables.[7]

OSHA's experience with the previous three variances, which all incorporated nearly identical decompression plans and did not result in safety issues, also provides evidence that the alternative procedure as a whole is at least as effective for this type of tunneling project as compliance with OSHA's decompression tables. The experience of State Plans[8] that either granted variances (Nevada, Oregon and Washington)[9] or promulgated a new standard (California)[10] for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, provide additional evidence of the effectiveness of this alternative procedure.

B. 29 CFR 1926.803(g)(1)(xvii)

Salini developed, and proposed to implement, an equally effective alternative to 29 CFR 1926.803(g)(1)(xvii), which requires the use of automatic controllers that continuously decrease pressure to achieve decompression in accordance with the tables specified by the standard. The applicant's alternative includes using the 1992 French Decompression Tables for guiding staged decompression to achieve lower occurrences of DCI, using a trained and competent attendant for implementing appropriate hyperbaric entry and exit procedures, and providing a competent hyperbaric supervisor and attending physician certified in hyperbaric medicine, to oversee all hyperbaric operations.

In reaching this preliminary conclusion, OSHA again notes the experience of previous nearly identical tunneling variances, the experiences of State Plan States, and a review of the literature and other information noted earlier.

C. 29 CFR 1926.803(g)(1)(xvii)

Salini developed, and proposed to implement, an effective alternative to the use of the special decompression chamber required by 29 CFR 1926.803(g)(1)(xvii). The EPBMTBM's man-lock and working chamber appear to satisfy all of the conditions of the special decompression chamber, including that they provide sufficient space for the maximum crew of three CAWs to stand up and move around, and safely accommodate decompression times up to 360 minutes.[11] Therefore, again noting OSHA's previous experience with nearly identical variances including the same alternative, OSHA preliminarily determined that the EPBMTBM's man-lock and working chamber function as effectively as the special decompression chamber required by the standard.

Pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the agency preliminarily finds that when the employer complies with the conditions of the previously granted Interim Order, or the conditions of the proposed variance, the working conditions of the employer's workers would be at least as safe and healthful as if the employer complied with the working conditions specified by paragraphs (e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii) of 29 CFR 1926.803.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the preliminary decision to grant an Interim Order allowing Salini's CAWs to perform interventions in hyperbaric conditions not exceeding 50 p.s.i.g. during the Northeast Boundary Tunnel Project, subject to the conditions that follow in this document. This Interim Order will remain in effect until completion of the Northeast Boundary Tunnel Project or until the agency modifies or revokes the Interim Order or makes a decision on Salini's application for a Permanent Variance. During the period starting with the publication of this notice until completion of the Northeast Boundary Tunnel, or until the agency modifies or revokes the Interim Order or makes a decision on its application for a Permanent Variance, the applicant is required to comply fully with the conditions of the Interim Order as an alternative to complying with the following requirements of 29 CFR 1926.803 (hereafter, ''the standard'') that:

1. Require the use of decompression values specified by the decompression tables in Appendix A of the

[6] Anderson HL (2002). Decompression sickness during construction of the Great Belt tunnel, Denmark. *Undersea and Hyperbaric Medicine,* 29(3), pp. 172–188.

[7] Le Péchon JC, Barre P, Baud JP, Ollivier F (September 1996). Compressed air work—French Tables 1992—operational results. *JCLP Hyperbarie Paris, Centre Medical Subaquatique Interentreprise, Marseille: Communication a l'EUBS,* pp. 1–5 (see Ex. OSHA–2012–0036–0005).

[8] Under Section 18 of the OSH Act, Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such States and territories as ''State Plan States'' Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards (29 U.S.C. 667).

[9] These state variances are available in the docket for the 2015 Traylor JV variance: Exs. OSHA–2012–0035–0006 (Nevada), OSHA–2012–0035–0005 (Oregon), and OSHA–2012–0035–0004 (Washington).

[10] See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at *http://www.dir.ca.gov/title8/sb7g26a154.html.*

[11] As part of the HOM, Salini submitted a letter from Dr. Tommy Love MD, asserting the safe accommodation of decompression times up to 360 minutes.

compressed-air standard (29 CFR 1926.803(f)(1));

2. Require the use of automated operational controls (29 CFR 1926.803(g)(1)(iii)); and

3. Require the use of a special decompression chamber (1926.803(g)(1)(xvii)).

In order to avail itself of the Interim Order, Salini must: (1) Comply with the conditions listed in the Interim Order for the period starting with the grant of the Interim Order and ending with Salini's completion of the Northeast Boundary Tunnel Project (or until the agency modifies or revokes the Interim Order or makes a decision on its application for a Permanent Variance); (2) comply fully with all other applicable provisions of 29 CFR part 1926; and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, including the affected employees of other employers, using the same means it used to inform these employees of its application for a Permanent Variance.

OSHA is also proposing that the same requirements (see above section IV, parts A through C) would apply to a Permanent Variance if OSHA ultimately issues one for this project. OSHA requests comment on those conditions as well as OSHA's preliminary determination that the specified alternatives and conditions would provide a workplace as safe and healthful as those required by the standard from which a variance is sought. After reviewing comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a Permanent Variance.

V. Description of the Specified Conditions of the Interim Order and the Application for a Permanent Variance

This section describes the alternative means of compliance with 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii) and provides additional detail regarding the proposed conditions that form the basis of Salini's application for an Interim Order and for a Permanent Variance. The conditions are listed in Section VI. For brevity, the discussion that follows refers only to the Permanent Variance, but the same conditions apply to the Interim Order.

Proposed Condition A: Scope

The scope of the proposed Permanent Variance would limit coverage to the work situations specified. Clearly defining the scope of the proposed Permanent Variance provides Salini, Salini's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed Permanent Variance would apply. To the extent that Salini exceeds the defined scope of this variance, it would be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers) [12] may request a Permanent Variance for a specific workplace or workplaces. If OSHA approves a Permanent Variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated as part of the project. In this instance, if OSHA were to grant a Permanent Variance, it would apply to only the applicant, Salini-Impregilo/Healy JV and only the Northeast Boundary Tunnel Project. As a result, it is important to understand that if OSHA were to grant Salini a Permanent Variance, it would not apply to any other employers, such as other joint ventures the applicant may undertake in the future. However, 29 CFR 1905.13 does contain provisions for future modification of Permanent Variances to add or include additional employers if future joint ventures are established.

Proposed Condition B: Duration

The Interim Order is only intended as a temporary measure pending OSHA's decision on the Permanent Variance, so this condition specifies the duration of the Order. If OSHA approves a Permanent Variance, it would specify the duration of the Permanent Variance as the remainder of the Northeast Boundary Tunnel Project.

Proposed Condition C: List of Abbreviations

Proposed condition C defines a number of abbreviations used in the proposed Permanent Variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and its employees' understanding of the conditions specified by the proposed Permanent Variance.

Proposed Condition D: Definitions

The proposed condition defines a series of terms, mostly technical terms, used in the proposed Permanent Variance to standardize and clarify their meaning. Defining these terms serves to enhance the applicant's and its employees' understanding of the conditions specified by the proposed Permanent Variance.

Proposed Condition E: Safety and Health Practices

This proposed condition requires the applicant to develop and submit to OSHA an HOM specific to the Northeast Boundary Tunnel Project at least six months before using the EPBMTBM for tunneling operations. The applicant must also submit, at least six months before using the EPBMTBM, proof that the EPBMTBM's hyperbaric chambers have been designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2012 (or the most recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*). These requirements ensure that the applicant develops hyperbaric safety and health procedures suitable for the project.

The submission of the HOM to OSHA, which Salini has already completed, enables OSHA to determine whether the safety and health instructions and measures it specifies are appropriate to the field conditions of the tunnel (including expected geological conditions), conform to the conditions of the variance, and adequately protect the safety and health of the CAWs. It also facilitates OSHA's ability to ensure that the applicant is complying with these instructions and measures. The requirement for proof of compliance with ASME PVHO–1.2012 is intended to ensure that the equipment is structurally sound and capable of performing to protect the safety of the employees exposed to hyperbaric pressure.

Additionally, the proposed condition includes a series of related hazard prevention and control requirements and methods (*e.g.,* decompression tables, job hazard analyses (JHA), operations and inspections checklists, incident investigation, and recording and notification to OSHA of recordable hyperbaric injuries and illnesses) designed to ensure the continued effective functioning of the hyperbaric equipment and operating system.

Proposed Condition F: Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken,

[12] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a Variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during hyperbaric operations. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during EPBMTBM operations.

Proposed Condition G: Worker Qualification and Training

This proposed condition requires the applicant to develop and implement an effective qualification and training program for affected workers. The proposed condition specifies the factors that an affected worker must know to perform safely during hyperbaric operations, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing hyperbaric intervention work is intended to ensure that they recognize, and respond appropriately to, hyperbaric safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Paragraph (2)(e) of this proposed condition requires the applicant to provide affected workers with information they can use to contact the appropriate healthcare professionals if the workers believe they are developing hyperbaric-related health effects. This requirement provides for early intervention and treatment of DCI and other health effects resulting from hyperbaric exposure, thereby reducing the potential severity of these effects.

Proposed Condition H: Inspections, Tests, and Accident Prevention

Proposed Condition H requires the applicant to develop, implement, and operate a program of frequent and regular inspections of the EPBMTBM's hyperbaric equipment and support systems, and associated work areas. This condition would help to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct hyperbaric operations. The condition would also enhance worker safety by reducing the risk of hyperbaric-related emergencies.

Paragraph (3) of this proposed condition requires the applicant to document tests, inspections, corrective actions, and repairs involving the EPBMTBM, and maintain these documents at the jobsite for the duration of the job. This requirement would provide the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems, and to determine that the actions taken to correct defects in hyperbaric equipment and systems were appropriate, prior to returning them to service.

Proposed Condition I: Compression and Decompression

This proposed condition would require the applicant to consult with the designated medical advisor regarding special compression or decompression procedures appropriate for any unacclimated CAW and then implement the procedures recommended by the medical consultant. This proposed provision would ensure that the applicant consults with the medical advisor, and involves the medical advisor in the evaluation, development, and implementation of compression or decompression protocols appropriate for any CAW requiring acclimation to the hyperbaric conditions encountered during EPBMTBM operations. Accordingly, CAWs requiring acclimation would have an opportunity to acclimate prior to exposure to these hyperbaric conditions. OSHA believes this condition would prevent or reduce adverse reactions among CAWs to the effects of compression or decompression associated with the intervention work they perform in the EPBMTBM.

Proposed Condition J: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, Salini must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to hyperbaric conditions by completing the OSHA Form 301 Incident Report and OSHA Form 300 Log of Work Related Injuries and Illnesses. The applicant did not seek a variance from this standard and therefore must comply fully with those requirements.

Examples of important information to include on the OSHA Form 301 Injury and Illness Incident Report (along with the corresponding question on the form) are:

Q14

- the task performed;
- the composition of the gas mixture (*e.g.,* air or oxygen);
- an estimate of the CAW's workload;
- the maximum working pressure;
- temperature in the work and decompression environments;
- unusual occurrences, if any, during the task or decompression

Q15

- time of symptom onset;
- duration between decompression and onset of symptoms

Q16

- type and duration of symptoms;
- a medical summary of the illness or injury

Q17

- duration of the hyperbaric intervention;
- possible contributing factors;
- the number of prior interventions completed by the injured or ill CAW; and the pressure to which the CAW was exposed during those interventions.[13]

Proposed Condition J would add additional reporting responsibilities, beyond those already required by the OSHA standard. The applicant would be required to maintain records of specific factors associated with each hyperbaric intervention. The information gathered and recorded under this provision, in concert with the information provided under proposed Condition K (using OSHA Form 301 Injury and Illness Incident Report to investigate and record hyperbaric recordable injuries as defined by 29 CFR 1904.4, 1904.7, 1904.8–1904.12), would enable the applicant and OSHA to assess the effectiveness of the Permanent Variance in preventing DCI and other hyperbaric-related effects.

Proposed Condition K: Notifications

Under the proposed condition, the applicant is required, within specified periods of time, to notify OSHA of: (1) Any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of hyperbaric exposures during EPBMTBM operations; (2) provide OSHA a copy of the hyperbaric exposures incident investigation report (using OSHA Form 301 Injury and Illness Incident Report) of these events

[13] See 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf*); and OSHA Recordkeeping Handbook (*http://www.osha.gov/recordkeeping/handbook/index.html*).

within 24 hours of the incident; (3) include on OSHA Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Baltimore/Washington DC OSHA Area Office (BWAO) within 15 working days should the applicant need to revise the HOM to accommodate changes in its compressed-air operations that affect Salini's ability to comply with the conditions of the proposed Permanent Variance; and (6) provide OTPCA and the BWAO, at the end of the project, with a report evaluating the effectiveness of the decompression tables.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA 301 Injury and Illness Incident Report) is more restrictive than the current recordkeeping requirement of completing OSHA Form 301 Injury and Illness Incident Report within 7 calendar days of the incident (1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to intervention-related hyperbaric (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing hyperbaric incidents, and the applicant's identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicant, its employees, and OSHA to assess the effectiveness of the Permanent Variance in providing the requisite level of safety to the applicant's workers and, based on this assessment, whether to revise or revoke the conditions of the proposed Permanent Variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this proposed condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed Permanent Variance to a successor company. In addition, the condition specifies that the transfer of the Permanent Variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the proposed Permanent Variance, and expedite the agency's administration and enforcement of the Permanent Variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed Permanent Variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed Permanent Variance.

VI. Specific Conditions of the Interim Order and the Proposed Permanent Variance

The following conditions apply to the Interim Order OSHA is granting to Salini. These conditions specify the alternative means of compliance with the requirements of paragraphs 29 CFR 1926.803 (f)(1), (g)(1)(iii), and (g)(1)(xvii). In addition, these conditions are specific to the alternative means of compliance with the requirements of paragraphs 29 CFR 1926.803 (f)(1), (g)(1)(iii), and (g)(1)(xvii) that OSHA is proposing for Salini's Permanent Variance. To simplify the presentation of the conditions, OSHA generally refers only to the conditions of the proposed Permanent Variance, but the same conditions apply to the Interim Order except where otherwise noted.[14]

The conditions would apply with respect to all employees of Salini exposed to hyperbaric conditions. These conditions are outlined in this Section:

A. Scope

The Interim Order applies, and the Permanent Variance would apply, only when Salini stops the tunnel-boring work, pressurizes the working chamber, and the CAWs either enter the working chamber to perform an intervention (*i.e.,* inspect, maintain, or repair the mechanical-excavation components), or exit the working chamber after performing interventions.

[14] In these conditions, OSHA is using the future conditional form of the verb (*e.g.,* ''would''), which pertains to the application for a Permanent Variance (designated as ''Permanent Variance'') but the conditions are mandatory for purposes of the Interim Order.

The Interim Order and Proposed Variance apply only to work:

1. That occurs in conjunction with construction of the Northeast Boundary Tunnel Project, a tunnel constructed using advanced shielded mechanical-excavation techniques and involving operation of an EPBMTBM;
2. In the EPBMTBM's forward section (the working chamber) and associated hyperbaric chambers used to pressurize and decompress employees entering and exiting the working chamber; and
3. Performed in compliance with all applicable provisions of 29 CFR part 1926 except for the requirements specified by 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii).

B. Duration

The Interim Order granted to Salini will remain in effect until OSHA modifies or revokes this Interim Order or grants Salini's request for a Permanent Variance in accordance with 29 CFR 1905.13. The proposed Permanent Variance, if granted, would remain in effect until the completion of Salini's Northeast Boundary Tunnel Project.

C. List of Abbreviations

Abbreviations used throughout this proposed Permanent Variance would include the following:

1. CAW—Compressed-air worker
2. CFR—Code of Federal Regulations
3. DCI—Decompression Illness
4. DMT—Diver Medical Technician
5. EPBMTBM—Earth Pressure Balanced Micro Tunnel Boring Machine
6. HOM—Hyperbaric Operations Manual
7. JHA—Job hazard analysis
8. OSHA—Occupational Safety and Health Administration
9. OTPCA—Office of Technical Programs and Coordination Activities

D. Definitions

The following definitions would apply to this proposed Permanent Variance. These definitions would supplement the definitions in Salini's project-specific HOM.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this proposed Permanent Variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Atmospheric pressure*—the pressure of air at sea level, generally 14.7 pounds per square inch absolute (p.s.i.a)., 1 atmosphere absolute, or 0 p.s.i.g.

3. *Compressed-air worker*—an individual who is specially trained and medically qualified to perform work in a pressurized environment while breathing air at pressures not exceeding 50 p.s.i.g.

4. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.[15]

5. *Decompression illness*—an illness (also called decompression sickness or ''the bends'') caused by gas bubbles appearing in body compartments due to a reduction in ambient pressure. Examples of symptoms of decompression illness include, but are not limited to: Joint pain (also known as the ''bends'' for agonizing pain or the ''niggles'' for slight pain); areas of bone destruction (termed dysbaric osteonecrosis); skin disorders (such as cutis marmorata, which causes a pink marbling of the skin); spinal cord and brain disorders (such as stroke, paralysis, paresthesia, and bladder dysfunction); cardiopulmonary disorders, such as shortness of breath; and arterial gas embolism (gas bubbles in the arteries that block blood flow).[16]

Note: Health effects associated with hyperbaric intervention, but not considered symptoms of DCI, can include: Barotrauma (direct damage to air-containing cavities in the body such as ears, sinuses, and lungs); nitrogen narcosis (reversible alteration in consciousness that may occur in hyperbaric environments and is caused by the anesthetic effect of certain gases at high pressure); and oxygen toxicity (a central nervous system condition resulting from the harmful effects of breathing molecular oxygen (O_2) at elevated partial pressures).

6. *Diver Medical Technician*—Member of the dive team who is experienced in first aid.

7. *Earth Pressure Balanced Micro Tunnel Boring Machine*—the machinery used to excavate a tunnel.

8. *Hot work*—any activity performed in a hazardous location that may introduce an ignition source into a potentially flammable atmosphere.[17]

9. *Hyperbaric*—at a higher pressure than atmospheric pressure.

10. *Hyperbaric intervention*—a term that describes the process of stopping the EPBMTBM and preparing and executing work under hyperbaric pressure in the working chamber for the purpose of inspecting, replacing, or repairing cutting tools and/or the cutterhead structure.

11. *Hyperbaric Operations Manual*—a detailed, project-specific health and safety plan developed and implemented by Salini for working in compressed air during the Northeast Boundary Tunnel Project.

12. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

13. *Man-lock*—an enclosed space capable of pressurization, and used for compressing or decompressing any employee or material when either is passing into, or out of, a working chamber.

14. *Pressure*—a force acting on a unit area. Usually expressed as pounds per square inch (p.s.i.).

15. *p.s.i.a.*—pounds per square inch absolute, or absolute pressure, is the sum of the atmospheric pressure and gauge pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Adding 14.7 to a pressure expressed in units of p.s.i.g. will yield the absolute pressure, expressed as p.s.i.a.

16. *p.s.i.g.*—pounds per square inch gauge, a common unit of pressure; pressure expressed as p.s.i.g. corresponds to pressure relative to atmospheric pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a Subtracting 14.7 from a pressure expressed in units of p.s.i.a. yields the gauge pressure, expressed as p.s.i.g. At sea level the gauge pressure is 0 psig.

17. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work, or the project.[18]

18. *Working chamber*—an enclosed space in the EPBMTBM in which CAWs perform interventions, and which is accessible only through a man-lock.

E. Safety and Health Practices

1. Salini would have to adhere to the project-specific HOM submitted to OSHA as part of the application (see OSHA–2018–2013–0002). The HOM provides the minimum requirements regarding expected safety and health hazards (including anticipated geological conditions) and hyperbaric exposures during the tunnel-construction project.

2. Salini would have to demonstrate that the EPBMTBM on the project is designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2012 (or most recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*) for the EPBMTBM's hyperbaric chambers.

3. Salini would have to implement the safety and health instructions included in the manufacturer's operations manuals for the EPBMTBM, and the safety and health instructions provided by the manufacturer for the operation of decompression equipment.

4. Salini would have to ensure that air or oxygen is the only breathing gas in the working chamber.

5. Salini would have to follow the 1992 French Decompression Tables for air or oxygen decompression as specified in the HOM; specifically, the extracted portions of the 1992 French Decompression tables titled, ''French Regulation Air Standard Tables.''

6. Salini would have to equip man-locks used by employees with an air or oxygen delivery system, as specified by the HOM, for the project. Salini would be required not to store in the tunnel any oxygen or other compressed gases used in conjunction with hyperbaric work.

7. Workers performing hot work under hyperbaric conditions would have to use flame-retardant personal protective equipment and clothing.

8. In hyperbaric work areas, Salini would have to maintain an adequate fire-suppression system approved for hyperbaric work areas.

9. Salini would have to develop and implement one or more Job Hazard Analysis (JHA) for work in the hyperbaric work areas, and review, periodically and as necessary (*e.g.,* after making changes to a planned intervention that affects its operation), the contents of the JHAs with affected employees. The JHAs would have to include all the job functions that the risk assessment[19] indicates are essential to prevent injury or illness.

10. Salini would have to develop a set of checklists to guide compressed-air work and ensure that employees follow the procedures required by the proposed Permanent Variance and this Interim Order (including all procedures

[15] Adapted from 29 CFR 1926.32(f).

[16] See Appendix 10 of ''A Guide to the Work in Compressed-Air Regulations 1996,'' published by the United Kingdom Health and Safety Executive available from NIOSH at *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-254/compReg1996.pdf.*

[17] Also see 29 CFR 1910.146(b).

[18] Adapted from 29 CFR 1926.32(m).

[19] See ANSI/AIHA Z10–2012, American National Standard for Occupational Health and Safety Management Systems, for reference.

required by the HOM approved by OSHA for the project, which this proposed variance would incorporate by reference). The checklists would have to include all steps and equipment functions that the risk assessment indicates are essential to prevent injury or illness during compressed-air work.

Salini would have to ensure that the safety and health provisions of this project-specific HOM adequately protect the workers of all contractors and subcontractors involved in hyperbaric operations for the project to which the HOM applies.

F. Communication

Salini would have to:

1. Prior to beginning a shift, implement a system that informs workers exposed to hyperbaric conditions of any hazardous occurrences or conditions that might affect their safety, including hyperbaric incidents, gas releases, equipment failures, earth or rock slides, cave-ins, flooding, fires, or explosions.

2. Provide a power-assisted means of communication among affected workers and support personnel in hyperbaric conditions where unassisted voice communication is inadequate.

(a) Use an independent power supply for powered communication systems, and these systems would have to operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) Test communication systems at the start of each shift and as necessary thereafter to ensure proper operation.

G. Worker Qualifications and Training

Salini would have to:

1. Ensure that each affected worker receives effective training on how to safely enter, work in, exit from, and undertake emergency evacuation or rescue from, hyperbaric conditions, and document this training.

2. Provide effective instruction on hyperbaric conditions, before beginning hyperbaric operations, to each worker who performs work, or controls the exposure of others, and document this instruction. The instruction would need to include:

(a) The physics and physiology of hyperbaric work;

(b) Recognition of pressure-related injuries;

(c) Information on the causes and recognition of the signs and symptoms associated with decompression illness, and other hyperbaric intervention-related health effects (*e.g.,* barotrauma, nitrogen narcosis, and oxygen toxicity);

(d) How to avoid discomfort during compression and decompression;

(e) Information the workers can use to contact the appropriate healthcare professionals should the workers have concerns that they may be experiencing adverse health effects from hyperbaric exposure; and

(f) Procedures and requirements applicable to the employee in the project-specific HOM.

3. Repeat the instruction specified in paragraph (G)(2)(b) of this proposed condition periodically and as necessary (*e.g.,* after making changes to its hyperbaric operations).

4. When conducting training for its hyperbaric workers, make this training available to OSHA personnel and notify the OTPCA at OSHA's national office and OSHA's nearest affected Area Office before the training takes place.

H. Inspections, Tests, and Accident Prevention

1. Salini would have to initiate and maintain a program of frequent and regular inspections of the EPBMTBM's hyperbaric equipment and support systems (such as temperature control, illumination, ventilation, and fire-prevention and fire-suppression systems), and hyperbaric work areas, as required under 29 CFR 1926.20(b)(2), including:

(a) Developing a set of checklists to be used by a competent person in conducting weekly inspections of hyperbaric equipment and work areas; and

(b) Ensuring that a competent person conducts daily visual checks and weekly inspections of the EPBMTBM.

2. Remove from service any equipment that constitutes a safety hazard until it corrects the hazardous condition and has the correction approved by a qualified person.

3. Salini would have to maintain records of all tests and inspections of the EPBMTBM, as well as associated corrective actions and repairs, at the job site for the duration of the job.

I. Compression and Decompression

Salini would have to consult with its attending physician concerning the need for special compression or decompression exposures appropriate for CAWs not acclimated to hyperbaric exposure.

J. Recordkeeping

In addition to completing OSHA Form 301 Injury and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, Salini would have to maintain records of:

1. The date, times (*e.g.,* time compression started, time spent compressing, time performing intervention, time spent decompressing), and pressure for each hyperbaric intervention.

2. The names of all supervisors and DMTs involved for each intervention.

3. The name of each individual worker exposed to hyperbaric pressure and the decompression protocols and results for each worker.

4. The total number of interventions and the amount of hyperbaric work time at each pressure.

5. The results of the post-intervention physical assessment of each CAW for signs and symptoms of decompression illness, barotrauma, nitrogen narcosis, oxygen toxicity or other health effects associated with work in compressed air for each hyperbaric intervention.

K. Notifications

1. To assist OSHA in administering the conditions specified herein, Salini would have to:

(a) Notify the OTPCA and the BWAO of any recordable injury, illness, or fatality (by submitting the completed OSHA Form 301 Injuries and Illness Incident Report) [20] resulting from exposure of an employee to hyperbaric conditions, including those that do not require recompression treatment (*e.g.,* nitrogen narcosis, oxygen toxicity, barotrauma), but still meet the recordable injury or illness criteria of 29 CFR 1904. The notification would have to be made within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; a copy of the incident investigation (OSHA Form 301 Injuries and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality. In addition to the information required by OSHA Form 301 Injuries and Illness Incident Report, the incident-investigation report would have to include a root-cause determination, and the preventive and corrective actions identified and implemented.

(b) Provide certification to the BWAO within 15 working days of the incident that Salini informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

(c) Notify the OTPCA and the BWAO within 15 working days and in writing, of any change in the compressed-air operations that affects Salini's ability to comply with the proposed conditions specified herein.

[20] See footnote 10.

(d) Upon completion of the Northeast Boundary Tunnel Project, evaluate the effectiveness of the decompression tables used throughout the project, and provide a written report of this evaluation to the OTPCA and the BWAO.

Note: The evaluation report would have to contain summaries of: (1) The number, dates, durations, and pressures of the hyperbaric interventions completed; (2) decompression protocols implemented (including composition of gas mixtures (air and/or oxygen), and the results achieved; (3) the total number of interventions and the number of hyperbaric incidents (decompression illnesses and/or health effects associated with hyperbaric interventions as recorded on OSHA Form 301 Injuries and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, and relevant medical diagnoses, and treating physicians' opinions); and (4) root causes of any hyperbaric incidents, and preventive and corrective actions identified and implemented.

(e) To assist OSHA in administering the proposed conditions specified herein, inform the OTPCA and the BWAO as soon as possible, but no later than seven (7) days, after it has knowledge that it will:

(i) Cease doing business;

(ii) Change the location and address of the main office for managing the tunneling operations specified herein; or

(iii) Transfer the operations specified herein to a successor company.

(f) Notify all affected employees of this proposed Permanent Variance by the same means required to inform them of its application for a Variance.

2. OSHA would have to approve the transfer of the proposed Permanent Variance to a successor company.

VII. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1905.11.

Signed at Washington, DC, on August 21, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–18377 Filed 8–26–19; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Assessment of the IMLS African American History and Culture (AAHC) Grant Program

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments about this assessment process, instructions and data collections.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 25, 2019.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Sandra Webb, Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Matthew Birnbaum, Ph.D., Supervisory Statistician, Office of Impact Assessment and Learning, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Birnbaum can be reached by Telephone: 202–653–4760 Fax: 202–653–4604, or by email at *mbirnbaum@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

The Museum Grants for African American History and Culture (AAHC) program is one of these six OIMLS Office of Museum Services (OMS) grant programs, and it was created by an Act of Congress in 2003—the same act that created the Smithsonian National Museum of African American History and Culture. This legislation directed IMLS to create a grant program to improve operations, care of collections, and development of professional management at African American museums. Now in its 13th year of funding grants, AAHC funds projects that nurture museum professionals; builds institutional capacity; and increases access to museum and archival collections at African American museums and Historically Black Colleges and Universities (HBCUs). Museums of all sizes and geographic areas whose primary purpose, as reflected in their mission is African American art, life, history, and culture, are eligible to apply for an AAHC grant.

The agency now seeks to undertake a systematic assessment to evaluate the performance of the AAHC grant program. The proposed evaluation approach is intended to provide a reasonable balance between scientific considerations for valid and reliable evidence with stakeholder utilization of the acquired knowledge. This investigation is tended to inform IMLS decision-making for current and future grant-making in this grant program, as well as for practices in this segment of the museum sector.

This action is to create the survey forms and instructions for the assessment for the next three years.

Agency: Institute of Museum and Library Services.

Title: Assessment of the IMLS African American History and Culture (AAHC) Grant Program.

OMB Number: 3137–TBD.

Frequency: Once.

Affected Public: Federal, State and local governments, African American museums.

Number of Respondents: TBD.

Estimated Average Burden per Response: TBD __ hours.

Estimated Total Annual Burden: TBD __ hours.

Total Annualized capital/startup costs: N/A.

Total Annual costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 22, 2019.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2019–18392 Filed 8–26–19; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: State Library Administrative Agency Survey FY20 and FY22

AGENCY: Institute of Museum and Library Services; National Foundation for the Arts and Humanities.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the continuation of the State Library Administrative Agency (SLAA) Survey for FY20 and FY22.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 25, 2019.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Sandra Webb, Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Marisa Pelczar, Ph.D., Program Analyst, Office of Impact Assessment and Learning, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Pelczar can be reached by Telephone: 202–653–4647 Fax: 202–653–4604, or by email at *mpelczar@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

Pursuant to Public Law 107–279, this State Library Administrative Agencies Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0072, which expires 01/31/2020.

State Library Administrative Agencies (''SLAAs'') are the official agencies of each state charged by state law with the extension and development of public library services throughout the state (20 U.S.C. 9122.) The purpose of this survey is to provide state and federal policymakers with information about SLAAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, and direct services to the public. Through the FY 2010 collection, the SLAA Survey was conducted annually; beginning with the FY 2012 collection, the survey is conducted biennially. Because the FY 2020 collection will not begin until early 2021, we are carrying over the documentation and estimated burden associated with the FY 2018 data.

This action is to create the survey forms and instructions for the assessment for the next three years.

Agency: Institute of Museum and Library Services.

Title: Assessment of the IMLS African American History and Culture (AAHC) Grant Program.

OMB Number: 3137–0072.

Frequency: Biennially.

Affected Public: Federal, State and local governments, State Library Administrative Agencies.

Number of Respondents: 51.

Estimated Average Burden per Response: TBD __ hours.

Estimated Total Annual Burden: TBD __ hours.

Total Annualized capital/startup costs: N/A.

Total Annual costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 22, 2019.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2019–18391 Filed 8–26–19; 8:45 am]

BILLING CODE 7036–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86725; File No. SR–OCC–2019–007]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning a Proposed Capital Management Policy That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

August 21, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2019, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would adopt a Capital Management Policy, which includes OCC's plan to replenish its capital in the event it falls close to or below its target capital (as defined below, ''Replenishment Plan''). The Capital Management Policy is included in confidential Exhibit 5a of the filing.[3] In order to implement aspects of the new Capital Management Policy, the proposed rule change would also amend the following governing documents: OCC's Rules, which can be found in Exhibit 5b, and OCC's schedule of fees, which can be found in Exhibit 5c. Material proposed to be added to OCC's Rules and schedule of fees, as currently in effect, is marked by underlining, and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC is proposing to adopt a new Capital Management Policy and to make amendments to OCC's Rules and schedule of fees necessary to implement the new Capital Management Policy. The main features of the Capital Management Policy and the related changes are: (a) To determine the amount of Equity sufficient for OCC to meet its regulatory obligations and to serve market participants and the public interest (as defined below, ''Target Capital Requirement''), (b) to monitor Equity[5] and liquid net assets funded by equity (''LNAFBE'')[6] levels to help ensure adequate financial resources are available to meet general business obligations; and (c) to manage Equity levels, including by (i) adjusting OCC's fee schedule (as appropriate) and (ii) establishing a plan for accessing additional capital should OCC's Equity fall below certain thresholds (''Replenishment Plan'').

The Replenishment Plan would: (i) Provide that should OCC's Equity fall below 110% of the Target Capital Requirement (as defined by the Capital Management Policy, ''Early Warning''), Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional Equity; (ii) provide that should OCC's Equity fall below 90% of the Target Capital Requirement or fall below the Target Capital Requirement for a period of 90 consecutive days (as defined in the Capital Management Policy, ''Trigger Event''), OCC would contribute the funds held under The Options Clearing Corporation Executive Deferred Compensation Plan Trust to the extent that such funds are (x) deposited on or after January 1, 2020 in respect of its Executive Deferred Compensation Plan (''EDCP'') and (y) in excess of amounts necessary to pay for benefits accrued and vested under the EDCP at such time (such funds are defined in Chapter 1 of the proposed changes to OCC's Rules as the ''EDCP Unvested Balance''); and (iii) provide that should contribution of the EDCP Unvested Balance fail to cure the Trigger Event, or if a further Trigger Event occurs, OCC will charge an Operational Loss Fee (as defined below) in equal shares to the Clearing Members.

OCC is also hereby proposing to create a layer of skin-in-the-game resources in the event of default losses. Specifically, OCC is amending Rule 1006 to state that: First, any current or retained earnings above 110% of the Target Capital Requirement will be used to offset default losses after applying a defaulting Clearing Member's margin and Clearing Fund contributions, and next, any remaining loss will be charged pro rata to (a) non-defaulting Clearing Members' Clearing Fund contributions, and (b) the aggregate value of the EDCP Unvested Balance.

Proposed Changes

OCC proposes to adopt a Capital Management Policy and make conforming changes to OCC's Rules and schedule of fees necessary to implement the Capital Management Policy, as described below, to formalize its policy to identify, monitor, and manage OCC's capital needs to promote compliance SEC Rule 17Ad–22(e)(15).[7] In formulating the Capital Management Policy, OCC also has considered the Commodity Futures Trading Commission's (''CFTC'') regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that exhibits referenced herein are included in the filing submitted by OCC to the Commission, but are not included in this Notice.

[4] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[5] The Capital Management Policy would define ''Equity'' as shareholders' equity as shown on OCC's Statement of Financial Condition.

[6] The Capital Management Policy would define ''LNAFBE'' as the level of cash and cash equivalents, no greater than Equity, less any approved adjustments (*i.e.,* agency-related liabilities such as Section 31 fees held by OCC).

[7] 17 CFR 240.17Ad–22(e)(15).

capital requirements for OCC as a DCO, as set forth in CFTC Rule 39.11(a)(2).[8]

Target Capital Requirement

The proposed Capital Management Policy would explain how OCC would annually determine the Target Capital Requirement. The proposed amendment to Chapter 1 of OCC's Rules would define OCC's Target Capital Requirement as the minimum level of Equity recommended by Management and approved by the Board to ensure compliance with applicable regulatory requirements and to keep such additional amount the Board may approve for capital expenditures. Resources held to meet OCC's Target Capital Requirement would be in addition to OCC's resources to cover participant defaults. OCC considers the LNAFBE it holds, limited to cash and cash equivalents, to be high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions. The Capital Management Policy would also explain that, on an annual basis, OCC's Chief Financial Officer (''CFO'') would recommend a Target Capital Requirement for the coming year. Management would review the CFO's report and, as appropriate, recommend the Target Capital Requirement to the Compensation and Performance Committee (''CPC''). The CPC would review, and as appropriate, recommend the proposal to the Board of Directors, which would review, and as appropriate, approve the Target Capital Requirement.

SEC Rule 17Ad–22(e)(15)

OCC would set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greatest of three amounts: (x) Six-months' current operating expenses; (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services (the ''RWD Amount''); and (z) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize (the ''Potential Loss Amount'').

The RWD Amount would be the amount recommended by Management on an annual basis in accordance with OCC's Capital Management Procedure[9] and, as appropriate, approved by the Board. OCC's Recovery and Orderly Wind-Down Plan (''RWD Plan'') identifies critical services and the length of time the Board has determined it would take to recover or wind-down.[10] Pursuant to the Capital Management Procedure, Management would use the assumptions in the RWD Plan to determine the RWD Amount, which is the cost to maintain those critical services over the prescribed recovery or wind-down period, assuming costs remain at historical levels. The calculation of the Potential Loss Amount would be based on Management's annual determination, pursuant to the Capital Management Procedure, of the amount of capital required to address OCC's operational risks. OCC quantifies the amount of capital to be held against OCC's operational risks by analyzing and aggregating potential losses from individual operational risk scenarios, aggregating the loss events, and conducting loss modeling at or above the 99% confidence level.[11]

CFTC Rule 39.11(a)(2)

The Capital Management Policy would also specify that when setting the Target Capital Requirement the Board will consider OCC's projected rolling twelve-months' operating expenses as required by CFTC Rule 39.11(a)(2).[12] For the avoidance of doubt, the Board is not required to set the Target Capital Requirement at the level of twelve-months' operating expenses.[13] Factors that OCC would consider when considering twelve-months' operating expenses include, but are not limited to: (i) OCC's obligations and responsibilities as a systemically important financial utility (''SIFMU''), (ii) OCC's obligations as a derivative clearing organization under CFTC Rule 39.11(a)(2), (iii) the types of financial resources the CFTC allows OCC to count towards the twelve-month requirement, and (iv) any conditions on the use of those resources the CFTC has imposed.

Excess Equity for Capital Expenditures

In addition, the Capital Management Policy would provide that OCC may increase its Target Capital Requirement by an amount to be retained for capital expenditures following a recommendation by Management and Board approval. From time to time Management may identify necessary capital investments in OCC's technology, facilities or other business tangible or intangible assets to enhance its effectiveness, efficiency or compliance posture. The Board would (a) determine if the capital needs are necessary and appropriate and, if so, (b) determine whether to increase the Target Capital Requirement or whether the amount can be accumulated as an amount in excess of the Target Capital Requirement. In case of the latter, capital in excess of 110% of the Target Capital Requirement would be available as skin in the game.[14] Factors the Board would consider in making this determination include, but are not limited to, the amount of funding required, how much Equity is proposed to be retained, the potential impact of the investment on OCC's operation, and the duration of time over which funds would be accumulated.

Monitoring Equity

The proposed Capital Management Policy would describe how Management reviews periodic analyses of LNAFBE, including projecting future volume, expenses, cash flows, capital needs and other factors to help ensure adequate financial resources are available to meet general business obligations. Those other factors would include, but not be limited to: (i) The level of existing prefunded corporate resources, (ii) the ability to borrow under an existing OCC line of credit; (iii) the ability to make a claim under certain insurance policies; (iv) OCC's tax rates and liabilities; and (v) unfunded obligations. The Capital Management Policy would further provide that Management would review an analysis of Equity at least monthly to identify whether an Early Warning or Trigger Event had occurred since the last review or was likely to occur before

[8] 17 CFR 39.11(a)(2).

[9] The Capital Management Procedure would be a cross-department internal procedure that provides direction on how those departments shall execute their responsibilities under the proposed Capital Management Policy. OCC has included a draft of the Capital Management Procedure OCC intends to implement if the Commission approves the proposed Capital Management Policy in confidential Exhibit 3a, for reference. The documents in Exhibit 3 are being provided as supplemental information to the filing and would not constitute part of OCC's rules, which have been provided in Exhibit 5.

[10] Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR–OCC–2017–021).

[11] Pursuant to the Capital Management Procedure, OCC's Enterprise Risk Management department (''ERM'') would quantify the Potential Loss Amount on an annual basis and provide that information to OCC's Chief Financial Officer (''CFO'') as an input to the CFO's recommendation to Management for the Target Capital Requirement. OCC has included ERM's process and methodology for quantifying the Potential Loss Amount from 2015 through present in confidential Exhibit 3b.

[12] 17 CFR 39.11(a)(2).

[13] Financial resources available to meet CFTC Rule 39.11(a)(2) are not limited to LNAFBE, and include OCC's own capital or any other form of financial resources deemed acceptable by the CFTC. *See* 17 CFR 39.11(b)(2).

[14] *See* OCC Rule 1006(e), as proposed in the changes attached [sic; the Commission notes that ''attached'' here means that the SRO included the relevant document as a confidential exhibit to the filing] as Exhibit 5b hereto.

the next review. The Capital Management Policy would provide that the Board of Directors is notified promptly if those triggers are breached. To the extent OCC suffers a catastrophic or sizable loss intra-month, and such loss amount is known or can reasonably be estimated, Management would review a forecast of the impact on Equity and, should that forecast demonstrate that Equity has fallen below the Early Warning or Trigger Event, Management shall promptly notify the Board.

Managing Equity

The Capital Management Policy would describe the actions OCC may take to manage its current or future levels of Equity. As described below, the primary forms of capital management actions would include: (i) Changes to OCC's fees or other tools to change costs for market participants; (ii) the Replenishment Plan; and (iii) use of current and retained earnings greater than 100% of the Target Capital Requirement to cover losses caused by the default of a Clearing Member.

Fee Schedule

The Capital Management Policy would provide that clearing fees will be based on the sum of OCC's annual budgeted/forecasted operating expenses, a defined operating margin and OCC's capital needs, divided by forecasted contract sides. On an annual basis, Management would review the operating margin level considering historical volume variance and other relevant factors, including but not limited to variance in interest rates and OCC's operating expenses. Management would recommend to the CPC, to which the Board has delegated authority for review and approval of changes to OCC's fees pursuant to the CPC's charter, whether changes to OCC's defined operating margin should be made.

The Capital Management Policy would provide that on a quarterly basis, Management would review its fee schedule and, considering factors including, but not limited to projected operating expenses, projected volumes, anticipated cash flows, and capital needs, recommend to the Board, or a Committee to which the Board delegated authority, whether a fee increase, decrease or waiver should be made in accordance with Article IX, Section 9 of OCC's By-Laws.[15]

The Capital Management Policy would provide that if OCC's Equity is above, in the aggregate, 110% of the Target Capital Requirement and any amount of excess Equity the Board approves for capital expenditures, the Board of Directors, or a Committee the Board has delegated, may use such tools as it considers appropriate to lower costs for Clearing Members, providing the Board believes doing so would likely not lower OCC's Equity below the Early Warning. Such tools would include lowering fees, a fee holiday or a refund. The Capital Management Policy would further provide that if OCC charges the Operational Loss Fee, as described below, and its Equity thereafter returns to a level at which the Board approves use of such tools, OCC would first employ tools to lower the cost of Clearing Member participation in equal share up to the amount of the Operational Loss Fee charged. This provision would help ensure that in the event OCC must charge an Operational Loss Fee to Clearing Members in equal shares, Clearing Members will recover the amount charged in equal shares up to the amount charged.

Replenishment Plan

Early Warning

The Capital Management Policy would provide that in the event OCC's Equity breaches the Early Warning threshold, or 110% of the Target Capital Requirement, Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional Equity.[16] The recommendation whether to implement a fee increase would be informed by several factors including, but not limited to, (i) the facts, circumstances and root cause of a decrease in Equity below the Early Warning threshold; (ii) the time it would take to implement a fee increase, inclusive of securing Board and SEC approval as required for those actions; (iii) the anticipated time a fee increase would take to accumulate the needed revenue based on projected contract volume, operational expenses and interest income over that time period; and (iv) the potential of a Trigger Event.

The Early Warning is intended to signal to OCC that its Equity is ''close to'' the Target Capital Requirement, as directed by Rule 17Ad22(e)(15)(iii). The Early Warning threshold is set at 110% because based on an analysis of OCC's projected revenue and expenses,[17] a 10% premium of the Target Capital Requirement represents approximately two months earnings based on current and projected data,[18] which OCC believes would provide sufficient time for Management and the Board to respond. The Capital Management Policy would provide that to the extent Management determines, during its annual review of the Capital Management Policy, that there is a change in the estimated length of time to accumulate approximately 10% of the Target Capital Requirement, Management will consider whether to recommend changes to the Early Warning and Trigger Event thresholds.

Trigger Event

The Capital Management Policy would also define a Trigger Event to be when OCC's Equity falls below 90% of the Target Capital Requirement or remains below the Target Capital Requirement for ninety consecutive calendar days. OCC is proposing the 90% threshold based on its analysis showing that two-months' earnings represents approximately a 10% premium of the Target Capital Requirement, discussed above. OCC believes, based on that analysis, that Equity below the 90% threshold would be a sign that corrective action more significant and with a more immediate impact than increasing fees should be taken to increase OCC's Equity Capital. OCC also set another Trigger Event at a threshold of Equity above 90% but below the Target Capital Requirement for a period of 90 consecutive days based on the time necessary for a clearing fee change to have an impact and to exhaust remedies prior to charging the Operational Loss Fee. This timeframe takes into account 30-day advance notice to Clearing Members to implement the fee change, implementation on the first of the month to accommodate changes to Clearing Members' systems, and, as discussed above, the approximately two-month period required to accumulate approximately 10% of the Target Capital Requirement. Based on the above-referenced analysis, OCC believes that, in the event a fee increase resulting from an Early Warning could not increase OCC's Equity above the

[15] OCC By-Law Art. IX, § 9.

[16] Pursuant to the Capital Management Procedure, Management's recommendation would be informed by the clearing fee amount calculated pursuant to the Fee Schedule Calculation Procedure, which provides direction to OCC's Finance department on how to calculate the necessary fee level pursuant to the requirements of the Capital Management Policy. OCC has included a draft of the Fee Schedule Calculation Procedure it intends to implement if the Commission approves the proposed Capital Management Policy in confidential Exhibit 3c, for reference.

[17] OCC has included the analysis in confidential Exhibit 3d.

[18] OCC defines earnings for purposes of this analysis as Operating Income, or revenue less expenses before taxes. Earnings does not include interest pass through earned on the cash deposits.

Target Capital Requirement within 90 days, it would likewise indicate that corrective action in the form of a fee increase would be insufficient.

If a Trigger Event occurs, OCC would first contribute the EDCP Unvested Balance to cure the loss. OCC believes that contributing the EDCP Unvested Balance to cover operational losses would align Management's interests with OCC's interest in maintaining required regulatory capital and operating OCC in a prudent manner. If application of the EDCP Unvested Balance brings OCC's Equity to within the Early Warning threshold (between 90% and 110% of the Target Capital Requirement), OCC would act to raise fees, in accordance with the Capital Management Policy's direction for OCC action in the event of an Early Warning, as discussed above.

If, however, OCC Equity remains below 90% of the Target Capital Requirement after applying the EDCP Unvested Balance, or if a subsequent Trigger Event occurs after applying all of the available EDCP Unvested Balance, OCC would charge an ''Operational Loss Fee,'' up to the maximum Operational Loss Fee identified in OCC's schedule of fees as described below, in equal shares to each Clearing Member, payable on five business days' notice, to raise additional capital. A further Trigger Event based on Equity falling below the Target Capital Requirement for a period of 90 consecutive calendar days would be measured beginning on the date OCC applies the EDCP Unvested Balance. OCC chose five business days to allow Clearing Members subject to the fee to assess its impact on their liquidity and take appropriate actions. OCC did not select a shorter period, such as the two-day period in which Clearing Members must fund Clearing Fund contributions,[19] because that shorter period is necessary for settlement obligations, which is not the case for the Operational Loss Fee.

OCC would calculate the maximum aggregate Operational Loss Fee based on the RWD Amount, which would ensure that OCC would have sufficient capital to facilitate a recovery or an orderly wind-down in the event of an operational loss. In order to account for OCC's tax liability for retaining the Operational Loss Fee as earnings, OCC may apply a tax gross-up to the RWD Amount (''Adjusted RWD Amount'') depending on whether the operational loss that caused Equity to fall below the Trigger Event threshold is tax deductible. The Capital Management Policy would provide that, in the event less than the full amount of the maximum Operational Loss Fee is needed to bring OCC's Equity to 110% of the Target Capital Requirement, only that amount will be charged. If OCC charges less than the maximum Operational Loss Fee, any remaining amount up to the maximum Operational Loss Fee will remain available for subsequent Trigger Events, provided that the sum of all Operational Loss Fees that have not been refunded shall not exceed the maximum Operational Loss Fee.

In the event that OCC employs a refund to Clearing Members in equal shares up to the amount of Operational Loss Fees previously charged, the amount of the maximum Operational Loss Fee available for subsequent Trigger Events would include the amount refunded. By allowing OCC to charge up to the maximum Operational Loss Fee—less any amounts previously charged and not refunded—should subsequent Trigger Events arise, the proposed Capital Management Policy would help maintain the continued ability of OCC to access replenishment capital should multiple Trigger Events occur in quick succession before OCC could implement a new or modified replenishment plan. In the unlikely event that the sum of all Operational Loss Fees charged exhausts the maximum Operational Loss Fee, the Board would need to convene to develop a new replenishment plan, subject to regulatory approval.

In formulating the Capital Management Policy OCC considered other means of allocating the Operational Loss Fee among OCC's Clearing Members, including allocating the cost to Clearing Members proportionally based on measures such as contract volume or risk profile, as evidenced by a Clearing Member's margin or clearing fund contributions. As part of its analysis for determining the Potential Loss Amount, OCC has identified individual operational risk scenarios that could result in an operational loss, including such risks as internal fraud, a cyber-attack on OCC's systems, employee lawsuits and damage to its facilities. The operational risks OCC identified are separate and distinct from the credit risk that Clearing Members present to OCC, which OCC manages through margin and Clearing Fund contributions and OCC's Default Management Procedures. OCC has not observed any correlation between the annual quantification of these risks and contract volume or Clearing Member credit risk. OCC has included a comparison of its quantification of these risks to contract volume and the amount of Clearing Fund deposits in confidential Exhibit 3e. OCC believes that charging the Operational Loss Fee in equal shares is preferable because it equally mutualizes risk of operational loss amongst the firms that use OCC's services. OCC believes that such mutualization is preferable because all Clearing Members benefit from equal access to the clearance and settlement services provided by OCC, irrespective of how much they choose to use it. Such access provides the benefit of credit and liquidity risk intermediation and associated regulatory capital benefits.

To implement the Operational Loss Fee, OCC is proposing an amendment to its schedule of fees that would provide a formula for calculating the maximum Operational Loss Fee OCC could charge, attached [sic] to this rule filing as Exhibit 5c. The amendment to OCC's fee schedule would express the Operational Loss Fee as a fraction, the numerator of which would be the Adjusted RWD Amount less the aggregate amount of Operational Loss Fees that OCC has previously charged that are not refunded at the time of calculation, and the denominator of which would be the number of Clearing Members at the time OCC charges the Operational Loss Fee. OCC would also include in the schedule of fees the conditions that would trigger the Operational Loss Fee to be charged. OCC proposes to amend its schedule of fees now: (1) To increase transparency about Clearing Members' maximum contingent obligations under the Capital Management Policy in the unlikely event OCC's Equity falls below the Trigger Event thresholds, (2) to promote operational efficiency so that OCC can access replenishment capital expeditiously if a Trigger Event occurs, and (3) to reduce the likelihood that OCC would be required to file an advance notice or proposed rule change prior to charging the Operational Loss Fee, thereby accelerating the time frame in which OCC could access replenishment capital if losses materialize that threaten OCC's ability to continue operations and services as a going concern.

To effectuate the Capital Management Policy, OCC also proposes to amend OCC Rule 209 so that the Operational Loss Fee would be payable within five business days. OCC Rule 209 currently provides that all charges and fees owed by a Clearing Member to OCC shall be due and payable within five business days following the end of each calendar month. The proposed amendment would add an exception for payment of the Operational Loss Fee, which would be due and payable within five business days following OCC's notice to the

[19] *See, e.g.,* OCC Rule 1006(h)(A).

Clearing Member that OCC had charged the Operational Loss Fee. The amendment to OCC Rule 209 would ensure that OCC can timely respond to operational losses that threaten OCC's ability to continue operations and services as a going concern. OCC would also amend Rule 101 to define ''Operational Loss Fee'' to mean the fee that would be charged to Clearing Members in equal shares, up to the maximum amount identified in OCC's schedule of fees less the aggregate amount of all such Operational Loss Fees previously charged and not yet refunded at the time of calculation, if, after contributing the entire EDCP Unvested Balance, Equity remains below the levels identified in OCC's schedule of fees.

Use of Current and Retained Earnings for Default Losses

The Capital Management Policy would provide that in the event of a clearing member default, OCC would use Equity above 110% of the Target Capital Requirement to offset any loss after applying the margin assets and Clearing Fund contribution of the defaulting Clearing Member. In addition, the Capital Management Policy would provide that OCC would contribute the EDCP Unvested Balance on a pro rata basis with non-defaulting Clearing Member contributions to the Clearing Fund to satisfy any remaining balance after applying the margin assets and Clearing Fund contribution of the defaulting Clearing Member and any OCC Equity above 110% of the Target Capital Requirement.

To implement this aspect of the Capital Management Policy, OCC would also amend OCC Rule 1006 to adjust the default waterfall and the allocation of Clearing Fund losses accordingly. Rule 1006(e), which currently governs use of retained earnings to cover certain losses prior to charging those losses to the Clearing Fund under Rule 1006(b) (*i.e.,* losses caused by Clearing Member defaults) and Rule 1006(c) (*i.e.,* losses caused by bank and clearing organization failures to perform obligations to OCC not recoverable under Rule 1006(b)), would be divided into subsections numbed Rule 1006(e)(i) through (e)(iii). OCC would add Rule 1006(e)(i) to require OCC to charge a loss or deficiency associated with a Clearing Member default to OCC's current and retained earnings that are greater than 110% of its Target Capital Requirement (which would be defined as above in Rule 101) prior to charging the Clearing Fund and the EDCP Unvested Balance under Rule 1006(b), as discussed below. Rule 1006(e)(ii) would contain the current text of the first two sentences of the current Rule 1006(e), updating the cross-reference therein to limit the scope to the use of earnings to cover losses caused by bank or clearing organization failures before charging the Clearing Fund under Rule 1006(c). Thus, OCC would retain the option, but not the obligation, to use current or retained earnings to cover such bank or clearing organization losses, for which the Rules currently provide. Rule 1006(e)(iii) would contain the last two sentences of Rule 1006(e) currently in effect, which concern (1) the meaning of ''current earnings'' and (2) provide for a Clearing Member's continuing liability for any deficiencies in that member's Clearing Fund contribution that OCC covers with OCC's current and retained earnings. With respect to the latter, OCC would amend Rule 1006(e)(iii) to remove reference to OCC's ''elect[ion]'' to charge the deficiency to current or retained earnings so that such liability for Clearing Fund contribution deficiencies remains if OCC is obligated to charge current and retained earnings over 110% of the Target Capital Requirement under proposed Rule 1006(e)(i).

OCC also proposes to amend Rule 1006(b) to provide that OCC would apply the EDCP Unvested Balance (which would be defined as above in Rule 101) on a pro rata basis with the Clearing Fund contributions of non-defaulting Clearing Members to satisfy any remaining balance after applying the defaulting Clearing Member's margin and Clearing Fund contribution and OCC's current and retained earnings greater than 110% of its Target Capital Requirement. By amendment to Rule 1006(b)(iii), the EDCP Unvested Balance's proportion of the loss would be calculated by a fraction, the numerator of which would be EDCP Unvested Balance and the denominator of which would be the sum of the EDCP Unvested Balance and the balance of all non-defaulting Clearing Members' Clearing Fund contributions.[20] Pursuant to proposed amendments to Rule 1006(b) and (e), such contribution of current and retained earnings would be made after applying the defaulting Clearing Member's margin and Clearing Fund contribution, but before charging that loss or deficiency proportionately to the Clearing Fund.

In addition, a proposed amendment to Rule 1006(g), concerning, among other things, the allocation of funds received under the Limited Cross-Guaranty Agreement between OCC and certain other clearing agencies in the event of the default of a common member, would provide that any funds received under that agreement by OCC with respect to losses incurred by OCC would be credited in accordance with Rule 1010. Rule 1010 concerns recovery of losses charged to non-defaulting Clearing Members and provides that any recovery of a loss charged proportionately against the contributions of those Clearing Members shall be paid to each Clearing Member charged in proportion to the amounts charged. The amendment to Rule 1006(g) would establish that the non-defaulting Clearing Members whose Clearing Fund contributions were charged would recover proportional to the amount their contributions were charged up to the amount their Clearing Fund contributions were charged. The recovery proportional to the amount charged to the EDCP Unvested Balance would be available for return to the EDCP.

Market Participant Outreach

In developing the proposed plan for replenishment capital OCC also sought input from market participants. On May 1, 2019, OCC Management presented to the SIFMA options committee and the Securities Traders Association on the following topics: (1) How OCC will set fees, (2) how OCC determines its operating margin, (3) OCC's proposal to add a working capital line of credit, (4) the triggers and thresholds for action, and (5) the amount that a replenishment plan would need to raise. A discussion ensued with participants from the SIFMA options committee concerning how OCC would set the Target Capital Requirement.

On May 28, 2019, OCC provided Clearing Members with a notice concerning the details of the Capital Management Policy.[21] OCC has included a copy of the letter in Exhibit

[20] Because Rule 1006 has separate provisions addressing use of the Clearing Fund to cover losses arising from a Clearing Member default (Rule 1006(b)) and losses arising from bank or clearing organization failures (Rule 1006(c)), certain changes would be made to the rules to limit the changes for purposes of effecting the Capital Management Policy to the use of current and retained earnings and the EDCP Unvested Balance in the event of a Clearing Member default. Specifically, the proposed changes to OCC's rules would eliminate Interpretations and Policies .01 and establishes the respective allocation provisions in Rule 1006(b)(iii) and (c)(iii). No substantive changes to Rule 1006(c) are intended.

[21] The letter references a ''one-time'' Operational Loss Fee, consistent with the proposed Capital Management Policy as approved by the Board at its May 13, 2019 meeting. As discussed below, the Board approved a revision to the proposal at its July 17, 2019 meeting to allow OCC to retain the ability to charge the Operational Loss Fee for subsequent Trigger Events up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded.

3f. OCC sent the same letter to the participant exchanges (including the non-shareholder exchanges). Either calls or meetings were held with non-shareholder exchanges to discuss the proposed Capital Management Policy and allow them to raise questions or concerns. No such concerns were expressed.

OCC conducted calls open to all Clearing Members on May 31, 2019 to discuss the proposal. The calls were attended by approximately 140 participants representing 40 organizations. No concerns with the proposed Capital Management Policy were expressed. Discussion ensued about the mechanics of the Operational Loss Fee, alternatives to equal allocation of the Operational Loss Fee among Clearing Members that OCC considered and the likelihood that OCC would need to charge the Operational Loss Fee. Management has also met with individual Clearing Members and other market participants to discuss the proposed Capital Management Policy.

After the Board meeting on July 17, 2019, OCC conducted a call with the SIFMA options committee to discuss certain features of the Capital Management Policy proposal approved at that meeting, including: (a) If OCC charges the Operational Loss Fee and its Equity thereafter returns to a level at which the Board approves use of tools to lower the cost of participation for Clearing Members, OCC would first employ tools to lower the Clearing Members' costs in equal share up to the amount of the Operational Loss Fee charged; and (b) if OCC charges the Operational Loss Fee, OCC would retain the ability to charge Operational Loss Fees for subsequent Trigger Events up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded.

OCC has included a summary of the questions raised and Management's responses during the above referenced calls and meetings in Exhibit 3g.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') and the rules and regulations thereunder. In particular, OCC believes that the Capital Management Policy is consistent with Section 17A(b)(3)(F) of the Exchange Act [22] and Rule 17Ad–22(e)(15) [23] thereunder for the reasons described below. In addition, OCC believes adding the Operational Loss Fee to its schedule of fees is consistent with Section 17A(b)(3)(D) of the Exchange Act,[24] and that the changes to OCC's Rules to effectuate the use of current and retained earnings in excess of 110% of the Target Capital Requirement and the EDCP Unvested Balance to cover default losses is consistent with Rule 17Ad–22(e)(4).[25]

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the rules of OCC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The Capital Management Policy is designed to ensure that OCC holds sufficient LNAFBE such that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses. In other words, holding sufficient LNAFBE would help OCC to absorb such operational losses and avoid a disruption that could negatively impact OCC's prompt and accurate clearing and settlement of transactions. By limiting the financial resources OCC counts toward its LNAFBE to cash and cash equivalents, the Capital Management Policy ensures those resources would be high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions. OCC would protect the interests of investors and the general public by establishing the Capital Management Policy, which is designed to ensure that such losses would not result in a failure or disruption of a SIFMU, as OCC is designated by the Financial Stability Oversight Council (''FSOC'') pursuant to the Payment, Clearing and Settlement Supervision Act.[26] FSOC has concluded that a failure or disruption at OCC would negatively affect significant dollar value and volume transactions in the options and futures markets, impose material losses on OCC counterparties and create liquidity and credit problems for financial institutions and others that rely on the markets OCC serves, and that such credit and liquidity problems would spread quickly and broadly among financial institutions and other markets.[27] Accordingly, FSOC determined that a failure or disruption at OCC could threaten the stability of the U.S. financial system.[28] Therefore, OCC believes that the Capital Management Policy, which is reasonably designed to ensure that OCC has sufficient LNAFBE to continue operations in the event of an operational loss, is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act by protecting investors and the public interest.[29]

Rule 17Ad–22(e)(15) under the Exchange Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage OCC's general business risk and hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.[30] The Capital Management Policy and amendments to OCC's Rules and Fee Schedule are designed for consistency with the requirements of Rule 17Ad–22(e)(15) for the reasons described below.

Rule 17Ad–22(e)(15)(i) requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk, including by determining the amount of LNAFBE based upon OCC's general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[31] Pursuant to the Capital Management Policy, OCC would set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greater of (x) six months' of OCC's current operating expenses; (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services, plus any excess Equity Management recommends, and the Board approves, to be retained for capital expenditures; and (z) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. By providing that OCC would set its Target Capital Requirement no less than the greatest of these three amounts, OCC believes the Capital Management Policy is consistent with Rule 17Ad–22(e)(15)(i).

The Capital Management Policy is also designed to identify, monitor and manage OCC's general business risk,

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(15).

[24] 15 U.S.C. 78q–1(b)(3)(D).

[25] 17 CFR 240.17Ad–22(e)(4).

[26] 12 U.S.C. 5463.

[27] FSOC Annual Report, Appendix A, at 187 (2012), *available at https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf.*

[28] *Id.*

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 17 CFR 240.17Ad–22(e)(15).

[31] 17 CFR 240.17Ad–22(e)(15)(i).

consistent with Rule 17Ad–22(e)(15), by providing that OCC's Board would review and approve the Target Capital Requirement annually. The Capital Management Policy is also designed to monitor OCC's general business risk by providing that OCC would perform an analysis of its Equity on at least a monthly basis to ensure that OCC's Equity has not fallen below the Early Warning or Trigger Event thresholds and is not likely to fall below those thresholds prior to the next review. The Capital Management Policy's requirement that Management report on the firm's LNAFBE relative to the Early Warning and Trigger Event thresholds at each regularly scheduled Board meeting is also designed to identify, monitor, and manage OCC's general business risk. The Capital Management Policy's requirement that the Board be promptly notified in the event of an Early Warning or Trigger Event is also reasonably designed to ensure that OCC can act quickly to ensure OCC's compliance with the LNAFBE-holding requirements of Rule 17Ad–22(e)(15).

Rule 17Ad–22(e)(15) further requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, including by holding LNAFBE equal to the greater of either (x) six months of OCC's current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services.[32] As described above, the Capital Management Policy would provide that OCC sets its Target Capital Requirement at a level sufficient to maintain LNAFBE in an amount that is the greatest of three amounts, which include six months' operating expenses, an amount determined by the Board to be sufficient to ensure recovery or orderly wind-down, and an amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. Therefore, the Capital Management Policy is designed to ensure that OCC maintains, at a minimum, LNAFBE equal to the greater of the two amounts required by Rule 17Ad–22(e)(15)(ii). By also including an amount determined by the Board to be sufficient to meet general business losses should they materialize, the Capital Management Policy is designed to ensure OCC maintains LNAFBE at an amount necessary to satisfy Rule 17Ad–22(e)(15)'s broader requirement that OCC hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.

Rule 17Ad–22(e)(15)(ii) further requires, in part, that LNAFBE held by OCC pursuant to Rule 17Ad–22(e)(15)(ii) shall be (A) in addition to resources held to cover participant defaults or other credit or liquidity risks,[33] and (B) of high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.[34] The Capital Management Policy is designed to satisfy Rule 17Ad–22(e)(15)(ii)(A) by providing that the resources held to meet OCC's Target Capital Requirement are in addition to OCC's resources to cover participant defaults and liquidity shortfalls. While the Capital Management Policy and proposed changes to OCC's Rules provide for the use of capital to cover credit losses in the event of a Clearing Member default, the proposed changes limit the amount of current and retained earnings available to cover such losses to the amount above 110% of the Target Capital Requirement. The Capital Management Policy is also designed to satisfy Rule 17Ad–22(e)(15)(ii)(B) by providing that the resources held to meet OCC's Target Capital Requirement be high quality and sufficiently liquid. As a result, OCC believes the Capital Management Policy is designed to comply with Rule 17Ad–22(e)(15)(ii)(A) and (B).

Rule 17Ad–22(e)(15)(iii) requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk, including by maintaining a viable plan, approved by the Board and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under Rule 17Ad–22(e)(15)(ii). The Capital Management Policy and amendments to OCC's Rules and schedule of fees are reasonably designed to establish a viable plan to raise additional capital in an amount up to the amount the Board determines annually to be sufficient to ensure recovery or orderly wind-down should OCC's Equity fall close to or below its Target Capital Requirement. By setting the threshold triggers by reference to the Target Capital Requirement, OCC's plan for replenishment capital is designed to require OCC to act to raise capital should its LNAFBE fall close to or below the amounts required under Rule 17Ad–22(e)(15)(ii). In addition, by providing that the Target Capital Requirement must be the greater of those amounts or the amount determined by the Board to be sufficient to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, the Capital Management Policy is also reasonably designed to ensure that OCC has a viable plan to raise the capital necessary to comply with Rule 17Ad–22(e)(15) as a whole. Furthermore, the Capital Management Policy provides that Management shall on an annual basis recommend the Board approve or, as appropriate, modify the Replenishment Plan. The Board would review and, as appropriate, approve Management's recommendation. Should OCC charge the full amount of the Operational Loss Fee, Management would recommend a new or modified replenishment plan, subject to regulatory approval. The Board would review and, as appropriate, approve Management's recommendation.

OCC's proposed addition of an Operational Loss Fee as part of its Replenishment Plan is also reasonably designed to establish a viable plan to raise additional capital. OCC's By-Laws and Rules serve as a contract between OCC and its Clearing Members. Thus, OCC believes the Operational Loss Fee is no less reliable than any other potential replenishment plan that does not involve accumulating replenishment capital in advance of any operational loss. Failure of a Clearing Member to pay the Operational Loss Fee if charged will have the same impact as failure to meet a margin call or clearing fund assessment, and thus may have significant consequences. Any Clearing Member in default of its obligations to OCC is subject to suspension and liquidation of the defaulting member's positions, from which OCC may collect all unpaid obligations to OCC.[35] Should the assets of the defaulting member be insufficient to cover its obligations, OCC may recover the unpaid amount from the Clearing Fund.[36]

While Rule 17Ad–22(e)(15)(iii) does not by its terms specify the amount of additional equity a clearing agency's plan for replenishment capital must be

[32] 17 CFR 240.17Ad–22(e)(15)(ii).

[33] 17 CFR 240.17Ad–22(e)(15)(ii)(A).

[34] 17 CFR 240.17Ad–22(e)(15)(ii)(B).

[35] OCC Rule 1108.

[36] OCC Rule 1006(a), clause (vi) (failure of any Clearing Member to make any other required payment or render any other required performance).

designed to raise, the SEC's adopting release states that ''a viable plan generally should enable the covered clearing agency to hold sufficient liquid net assets to achieve recovery or orderly wind-down.'' [37] OCC believes that the Capital Management Policy and Operational Loss Fee is consistent with the SEC's adopting release for Rule 17Ad–22(e)(15)(iii) because OCC sets the maximum Operational Loss Fee at an amount sufficient to raise, on a post-tax basis, the amount determined annually by the Board to be sufficient to ensure recovery or orderly wind-down pursuant to the Board's annual approval of the RWD Plan.

In its adopting release, the SEC also states that in developing its policies and procedures, a covered clearing agency ''generally should consider and account for circumstances that may require a certain length of time before any plan can be implemented.'' [38] In the case of an Early Warning, a fee increase would require Board approval, which could be obtained in a special meeting of the Board on an expedited basis. OCC would file the fee increase with the SEC for immediate effectiveness, thereby minimizing the amount of time needed to implement the new fee. In the case of a Trigger Event, the Operational Loss Fee added to the fee schedule would not require further Board approval to implement, and would likely not require further regulatory approval to implement because this proposed rule change would add the fee to OCC's schedule of fees. By allowing OCC to charge up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded, the Capital Management Policy would help OCC maintain its ability to access replenishment capital during the time it would take to implement a new or revised Replenishment Plan. The Operational Loss Fee and amendment to Rule 209(a) further account for the length of time to implement OCC's plan for replenishment capital by requiring payment within five business days. Therefore, OCC believes the proposed Capital Management Policy, Operational Loss Fee, and amendments to OCC's Rules are consistent with the SEC's adopting release for Rule 17Ad–22(e)(15)(iii).

OCC also believes the Operational Loss Fee is consistent with Section 17A(b)(3)(D) of the Exchange Act, which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants. OCC believes the proposed Operational Loss Fee is reasonable because it is designed to accumulate additional capital to ensure that OCC can continue to meet its obligations as a SIFMU to Clearing Members and the general public. OCC believes that the proposed Operational Loss Fee is reasonable also because it is designed as a viable plan for replenishing OCC's LNAFBE in the event OCC's Equity falls below certain thresholds that are themselves designed to ensure that OCC act to raise additional capital before OCC's Equity reaches the amounts required by Rule 17Ad–22(e)(15)(ii). And as discussed above, by providing that the Replenishment Amount be sufficient to ensure OCC has sufficient capital to cover the amount the Board determines sufficient to ensure a recovery or orderly wind-down, OCC believes the Operational Loss Fee is consistent with Rule 17Ad–22(e)(15)(iii). OCC also believes that the proposed Operational Loss Fee would result in an equitable allocation of fees among its participants because it would equally mutualize risk of operational loss amongst the firms that use OCC's services. The Clearing Members' equal access to the clearance and settlement services provided by OCC, which provide the benefit of credit and liquidity risk intermediation and associated regulatory capital benefits, is of equal benefit to all Clearing Members irrespective of how much they choose to use it. In addition, the Capital Management Policy provides that if OCC charges the Operational Loss Fee and its Equity thereafter returns to a level at which the Board approves use of tools to lower the cost of Clearing Member participation to return Equity in excess of 110% of its Target Capital Requirement, such as a refund, OCC will employ such tools to lower costs for Clearing Members in equal shares, up to the amount of the Operational Loss Fee charged. Thus, Clearing Members will share both the cost and recovery of the Operational Loss Fee equally. As a result, OCC believes that the proposed Operational Loss Fee provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Exchange Act.[39]

OCC also believes the amendments to its Rules for use of current and retained earnings and the EDCP Unvested Balance to cover default losses are consistent with Rule 17Ad–22(e)(4), which provides, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[40] By providing that OCC shall use current and retained earnings in excess of 110% of its Target Capital Requirement, as well as contributing the EDCP Unvested Balance on a pro rata basis with Clearing Member's Clearing Fund contributions, OCC is providing for additional financial resources available to cover losses in the event of a Clearing Member default, and reducing the amount OCC would charge the Clearing Fund contributions of non-defaulting Clearing Members. Therefore, OCC believes the amendments to its Rules are consistent with Rule 17Ad–22(e)(4).

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act [41] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC believes that the Capital Management Policy and amendments to OCC's Rules and schedule of fees would not have any impact, or impose any burden, on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above, the Capital Management Policy describes how OCC would measure, monitor and manage its capital needs to ensure appropriate financial resiliency for a SIFMU and comply with applicable financial regulations, including requirements about the amount of LNAFBE it must hold. The Capital Management Policy is designed for OCC to maintain Equity at a level necessary to meet the requirements of Rule 17Ad–22(e)(15) and serve its Clearing Members and the public interest.

While the proposed Operational Loss Fee, in the unlikely event it is charged, would have an effect on the amount of fees that Clearing Members pay for OCC's services, the proposed rule change is designed to allocate those fees on an equal basis to all Clearing Members. OCC's Rules currently require Clearing Members to maintain net

[37] Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70836 (Oct. 13, 2016).

[38] *Id.*

[39] 15 U.S.C. 78q–1(b)(3)(D).

[40] 17 CFR 240.17Ad–22(e)(4)(i).

[41] 15 U.S.C. 78q–1(b)(3)(I).

capital of at least $2 million.[42] Based on the most recent financial information reported by Clearing Members, which OCC has included in confidential Exhibit 3h, OCC believes that 98% of Clearing Members could absorb the maximum amount of the Operational Loss Fee without breaching their minimum net capital requirements or the SEC's ''early warning'' threshold.[43] OCC is comfortable with Clearing Members' ability to pay the Operational Loss Fee because the amount of the maximum Operational Loss Fee that would be charged per Clearing Member is approximately the same as the contingent obligations under the OCC clearing fund assessment requirements for a Clearing Member operating at the minimum clearing fund deposit—$1 million. Consequently, OCC does not believe the Operational Loss Fee obligation poses a significant barrier to entry for smaller Clearing Members. By adding the Operational Loss Fee to OCC's schedule of fees, the fee would be a transparent obligation of membership based upon which Clearing Members can independently assess their rights and obligations.

In addition, the Capital Management Policy would help address the relative impact that charging the Operational Loss Fee in equal shares would have on smaller Clearing Members by providing that should OCC charge the fee and thereafter return to a position where the Board may approve tools to lower costs for Clearing Members, such as refunds, OCC would employ such tools to lower costs for Clearing Members on an equal basis, up to the amount of the Operational Loss Fee charged. Thus, all Clearing Members shall share equally in the cost and recovery of the Operational Loss Fee amounts charged.

Moreover, any barrier to entry that the Operational Loss Fee may impose is not unnecessary in furtherance of the Exchange Act, and the rules the SEC has promulgated thereunder. Pursuant to those rules, OCC must hold minimum LNAFBE and have a viable plan to replenish equity should OCC's equity fall close to or below those minimums. It is entirely appropriate that the Clearing Members that benefit equally from OCC's services share the burden equally should OCC experience an operational loss that threatens its ability to continue providing those services and comply with its regulatory obligations.

[42] OCC Rule 302.

[43] 17 CFR 240.15c3–1.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–OCC–2019–007 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–OCC–2019–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

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–OCC–2019–007 and should be submitted on or before September 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–18385 Filed 8–26–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86722; File No. SR–LTSE–2019–01]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Order Approving Proposed Rule Change To Adopt Rule 14.425, Which Would Require Companies Listed on the Exchange To Develop and Publish Certain Long-Term Policies

August 21, 2019.

I. Introduction

On June 25, 2019, the Long-Term Stock Exchange, Inc. (''LTSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 14.425 (Long-Term Policies), which would require companies listed on the Exchange to develop and publish certain policies that the Exchange believes will facilitate long-term focus and value creation. The proposed rule change was published for

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comment in the **Federal Register** on July 12, 2019.[3] The Commission received one comment letter, which supported the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

On May 10, 2019, the Commission granted the Exchange's application for registration as a national securities exchange under Section 6 of the Act,[5] including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.[6] The Exchange is proposing to enhance its listing requirements by adopting proposed Rule 14.425, which would require companies listed on the Exchange (''LTSE-Listed Issuers'') to adopt and publish the following policies: A Long-Term Stakeholder Policy, a Long-Term Strategy Policy, a Long-Term Compensation Policy, a Long-Term Board Policy and a Long-Term Investor Policy, as described further below (collectively, the ''Policies'').[7] These Policies must be consistent with the set of principles articulated in proposed Rule 14.425(b), as described further below.

Long-Term Principles

The Exchange proposes that LTSE-Listed Issuers will have flexibility in developing what they believe to be appropriate Policies for their businesses; however, each of the Policies would be required to be consistent with the following long-term principles (collectively, the ''Principles''):

- Long-term focused companies should consider a broader group of stakeholders and the critical role they play in one another's success;
- Long-term focused companies should measure success in years and decades and prioritize long-term decision-making;
- Long-term focused companies should align executive compensation and board compensation with long-term performance;
- Boards of directors of long-term focused companies should be engaged in and have explicit oversight of long-term strategy; and
- Long-term focused companies should engage with their long-term shareholders.

Long-Term Policies

In addition to requiring the Policies to be consistent with the Principles, the Exchange would require each of the required Policies to include certain minimum elements, as described further below.

(A) Long-Term Stakeholder Policy

Proposed Rule 14.425(a)(1) would require that each LTSE-Listed Issuer adopt and publish a Long-Term Stakeholder policy explaining how the issuer operates its business to consider all of the stakeholders critical to its long-term success. At a minimum, this policy would be required to include a discussion of (i) the stakeholder groups the LTSE-Listed Issuer considers critical to long-term success, (ii) the LTSE-Listed Issuer's impact on the environment and its community, (iii) the LTSE-Listed Issuer's approach to diversity and inclusion, (iv) the LTSE-Listed Issuer's approach to investing in its employees, and (v) the LTSE-Listed Issuer's approach to rewarding its employees and other stakeholders for contributing to the LTSE-Listed Issuer's long-term success.

(B) Long-Term Strategy Policy

Proposed Rule 14.425(a)(2) would require that each LTSE-Listed Issuer adopt and publish a Long-Term Strategy Policy explaining how the LTSE-Listed Issuer prioritizes long-term strategic decision-making and long-term success. The Long-Term Strategy Policy would be required to define the LTSE-Listed Issuer's long-term time horizon and include a discussion of how this time horizon relates to the LTSE-Listed Issuer's strategic plans, how the LTSE-Listed Issuer aligns success metrics with that horizon, and how it implements long-term prioritization throughout the organization. According to the Exchange, the disclosure of this policy is designed to increase transparency for shareholders on the strategic goals of the company's managers and to provide for greater alignment and accountability between a company's long-term vision and investor expectations.

(C) Long-Term Compensation Policy

Proposed 14.425(a)(3) would require that each LTSE-Listed Issuer adopt and publish a policy explaining the LTSE-Listed Issuer's alignment of executive financial and non-financial compensation and of board compensation with the LTSE-Listed Issuer's long-term success and long-term success metrics. According to the Exchange, long-term focused companies seek to align the compensation of their executive officers with the long-term performance of the company. In addition, the Exchange believes that since the boards of such companies play an active role in long-term strategy, such companies seek to align the compensation of their boards to long-term performance as well. The Exchange notes that much of the information that the company would need to disclose under proposed Rule 14.425(a)(3) also would be required by Rule 402 of the Commission's Regulation S–K.[8] Nonetheless, the Exchange believes that requiring LTSE-Listed Issuers to publish a Long-Term Compensation Policy would still be helpful to long-term investors.

(D) Long-Term Board Policy

Proposed 14.425(a)(4) would require that each LTSE-Listed Issuer adopt and publish a policy explaining the engagement of the LTSE-Listed Issuer's board of directors in the LTSE-Listed Issuer's long-term focus, including discussion of whether the board and/or which board committee(s), if any, have explicit oversight of and responsibility for long-term strategy and success metrics. The Exchange believes that the board of directors should be engaged with the LTSE-Listed Issuer's forward-looking long-term strategy and that investors would find this information useful.

(E) Long-Term Investor Policy

Proposed 14.425(a)(5) would require that each LTSE-Listed Issuer adopt and publish a policy explaining how the LTSE-Listed Issuer engages with long-term investors. The Exchange believes that forward-thinking companies value long-term investor input and consider their perspective on company governance as important to the development of the company's long-term strategy.

Disclosure of Policies and Enforcement

Proposed Rule 14.425(c) would require that each LTSE-Listed Issuer review the policies required by proposed Rule 14.425(a) at least annually and make such policies available publicly and free of charge on or through its website. In addition, each LTSE-Listed Issuer would be required to disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10–K (or if a foreign private issuer, Form 20–F) filed with the Commission, that these policies are available on or through its website, and to provide the website address. According to the Exchange, these requirements are

[3] *See* Securities Exchange Act Release No. 86327 (July 8, 2019), 84 FR 33293 (July 12, 2019) (''Notice'').

[4] *See* Letter from Joe Caputo, Council of Institutional Investors (''CII''), to Vanessa Countryman, Secretary, Commission, dated August 1, 2019 (''CII Letter'').

[5] 15 U.S.C. 78f.

[6] *See* Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019).

[7] *See* proposed Rule 14.425(a).

[8] 17 CFR 229.

intended to ensure that investors are aware of and have access to the Policies required by the proposed rule.

The Exchange has represented that it will enforce the provisions of proposed Rule 14.425 by ensuring that each LTSE-Listed Issuer has addressed all of the elements enumerated in each of the Policies, consistent with the Principles, and has made the Policies publicly available without cost.

As noted above, the Commission received one comment letter received regarding the proposal.[9] The commenter supported the Exchange's focus on a long-term vision for its listed companies and stated that ''. . . the long-term policies described in the filing are thoughtful, well-structured, and generally aligned with CII's membership approved corporate governance policies.''[10]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that those rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission notes that the Exchange's proposal would impose additional requirements for its listed issuers, beyond those contained in its existing listing rules. Specifically, the proposal would require issuers to adopt and publish certain Policies that are consistent with the Principles articulated in the proposed rule. The Exchange has represented that it will enforce the provisions of the proposed rule by ensuring that each LTSE-Listed Issuer has addressed all of the elements enumerated in each of the Policies, consistent with the Principles, and has made the Policies publicly available without cost.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–LTSE–2019–01) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–18381 Filed 8–26–19; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* note 4, *supra.*

[10] *See* CII Letter at 2.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86723; File No. SR–BOX–2019–24]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 7600

August 21, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2019, BOX Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7600 to extend split-price functionality to Complex QOO Orders on the BOX Trading Floor. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

In March 2018, the Exchange adopted rules that allowed for split-price transactions for Qualified Open Outcry (''QOO'') Orders on the BOX Trading Floor.[3] The Exchange now proposes to extend this functionality to Complex QOO Orders on the BOX Trading Floor. The Exchange believes the proposed change is reasonable as split-price functionality applies to complex orders at another exchange with a physical trading floor.[4]

Background

The industry first recognized the complexity of the split-price order in 2005 when Nasdaq Phlx, LLC (''Phlx'') filed to create an exception from existing priority rules for spit-price orders.[5] The purpose behind the split-

[3] *See* Securities Exchange Act Release No. 82891 (March 16, 2018), 83 FR 12627 (March 22, 2018)(Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 7600(i) To Allow Split-Price Transactions on the BOX Trading Floor)(''Approval Order'').

[4] *See* Nasdaq PHLX LLC (''Phlx'') Floor Trading Rules Section 22(a)(2)(D)(ii). On Phlx, split price functionality for complex and multi-leg orders are allowed on the trading floor, but due to Phlx system limitations, require manual calculation. Under this proposal, BOX is not requiring split price complex orders and multi-leg orders to be manually calculated, as the BOX system has the functionality to process these orders. Further, on Phlx, complex and multi-leg orders that qualify for the exception in Phlx Section 22(a)(2)(D) are afforded the priority provision in Phlx Floor Allocation Section 25(a)(2). The Exchange notes that this priority provision on Phlx is similar to BOX's split price priority provision detailed in BOX Rule 7600(i)(2). As such, the Exchange believes that the proposed change to expand split price priority to Complex QOO Orders and multi-leg QOO Orders on the Exchange is appropriate as another options exchange currently has a similar offering in place.

[5] *See* Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR–Phlx–2005–028) (pilot approval). *See also*

price priority exception was ''to bring about the execution of large orders, which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to the priority rules.'' [6] The proposed exception allows a Participant effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment, even if there are orders in the book at the same price.

BOX adopted rules for split-price transactions on the BOX Trading Floor in March 2018.[7] BOX's split-price priority rules are only available for Qualified Open Outcry (''QOO'') Orders and are not available for Complex Orders.

Proposal

The Exchange now proposes to extend the split-price priority functionality to Complex QOO Orders [8] on the BOX Trading Floor.

BOX Rule 7600(i)(1) details current priority principles for single leg split-price transactions of less than 100 contracts occurring in open outcry on the Trading Floor. Generally, under BOX Rule 7600(i)(1), if an order or offer (bid) for any number of contracts of a series is represented to the trading crowd, a Floor Participant that buys (sells) one or more contracts of that order or offer (bid) at one price will have priority over all other orders and quotes, except Public Customer Orders resting in the BOX Book, to buy (sell) up to the same number of contracts of those remaining from the same order or offer (bid) at the next lower (higher) price. The Exchange proposes to allow the above priority principles for split-price transactions for Complex QOO Orders and multi-leg QOO Orders with less than 100 contracts on the BOX Trading Floor.

Specifically, the Exchange proposes to add Rule 7600(i)(1)(i) which states that if an order or offer (bid) for any number of units of a Complex QOO Order or multi-leg QOO order is represented to the trading crowd, a Floor Participant that buys (sells) one or more units of that order or offer (bid) at one price will have priority over all other orders and quotes, except Public Customer Orders resting in the BOX Book or Complex Order Book, to buy (sell) up to the same number of units of those remaining from the same order or offer (bid) at the next lower (higher) price. The Exchange notes that the proposed language is substantially similar to the current language of Rule 7600(i)(1), except the proposed provision governs Complex QOO Orders and multi-leg QOO orders of less than 100 units.

The Exchange believes that the proposal to extend the split-price priority detailed in Rule 7600(i)(1) to Complex QOO Orders and multi-leg QOO orders of less than 100 units is reasonable and consistent with the Act. As stated herein, the Commission has recognized the importance of split-price trades because they permit the execution of large blocks, even permitting a limited exception to priority rules. As such, due to the nature and complexity of Complex QOO Order and multi-leg QOO orders and the occasional need to execute these orders at sub-increment prices, the Exchange believes that extending split-price functionality to these orders is appropriate.

For example, assume a Floor Broker is looking to execute a split price Complex QOO Order at a price of 2.005 in strategy A+B for 50. Assume a Floor Market Maker is willing to sell 25 units at $2.00 provided that he can also sell the remaining 25 units at $2.01. Under the proposed change, that Floor Market Maker could offer $2.00 for 25 units and then, by virtue of the proposed split-price priority, he will have priority for the balance of the order (up to 25 units) over all other Participants, except Public Customer Orders resting on the BOX Book or Complex Order Book. The Floor Broker will enter strategy A+B for 50 at a price of $2.005. The system will then split the QOO Order. The first transaction will be for 25 units at $2.00. The second transaction will be for 25 units at $2.01, the next best price for the Floor Broker [sic] customer. The Floor Market Maker (*i.e.,* the contra-side of the QOO Order) would have priority over all other Participants to sell the 25 contracts at $2.01, except Public Customer Orders resting on the BOX Book or Complex Order Book. The Floor Broker's customer will receive a net purchase price of $2.005 for 50 contracts,[9] which is the price that the Floor Broker entered when submitting the QOO Order.

Proposed Rule 7600(i)(3) details split-price priority for Complex QOO Orders or offers (bids) and multi-leg QOO Orders or offers (bids) of 100 or more units. If an order or offer (bid) of 100 or more units of a Complex QOO Order or multi-leg QOO Order is represented to the trading crowd, a Floor Participant that buys (sells) 50 or more of the units of that Complex QOO Order or offer (bid) or multi-leg QOO Order of offer (bid) at one price will have priority over all other orders and quotes to buy (sell) up to the same number of units of those remaining from the same order or offer (bid) at the next lower (higher) price. The incoming Complex QOO Order or multi-leg QOO order will have priority over all orders and quotes on the BOX Book and Complex Order Book.

In order for a Floor Participant to avail himself to split-price priority pursuant to BOX Rule 7600(i)(3) for Complex QOO Orders or multi-leg QOO Orders, there are certain requirements. First, the priority is available for open outcry transactions only (*i.e.,* QOO Orders). The Floor Participant must make its bid (offer) at the next lower (higher) price for the second (or later) transaction at the same time as the first bid (offer) or promptly following the announcement of the first (or earlier) transaction. The second (or later) purchase (sale) must represent the opposite side of a transaction with the same order or offer (bid) as the first (or earlier) purchase (sale).

For example, assume a Floor Broker is looking to execute a split price Complex QOO Order at a price of 2.005 in strategy A+B for 100. Assume there is a resting Public Customer order to buy leg A at 1.00 and a resting Public Customer order to sell leg A at 1.01. Leg B has a resting Public Customer Order to buy at 1.00 and no resting orders to sell Leg B. The order would be split into 50 A+B at 2.01 and 50 A+B at 2.00 for a net price of 2.005 for the strategy. The strategy order for 50 A+B at 2.00 is permitted because the order is for at least 100 contracts, and the Floor Broker executed 50 contracts at the first price (*i.e.,* 2.01) giving the Floor Broker priority at the second price (*i.e.,* 2.00). The following executions would be reported: 50 Leg A at 1.00, 50 Leg A at 1.00, 50 Leg B at 1.00, and 50 Leg B at 1.01.

The Exchange further proposes that if the width of the quote is $0.01, and both the bid and offer represent Public Customer Orders resting in the BOX Book and/or Complex Order Book, split-price priority pursuant to proposed Rule 7600(i)(3) is not available to a Floor

Securities Exchange Act Release No. 55993 (June 29, 2007), 72 FR 37301 (July 9, 2007) (SR–Phlx–2007–044) (permanent approval).

[6] *See* Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR–Phlx–2005–028).

[7] *See* Securities Exchange Act Release No. 82891 (March 18, 2018), 83 FR 12627 (March 22, 2018) (SR–BOX–2019–36).

[8] The Exchange also proposes to extend split-price priority functionality to multi-leg QOO Orders on the BOX Trading Floor. Multi-leg QOO Orders are the same as Complex QOO Orders except for the ratio restrictions. *See* Securities Exchange Act Release No. 85052 (February 5, 2019), 84 FR 3265 (February 11, 2019) (SR–BOX–2019–01).

[9] The Floor Broker's customer would receive 25 contracts at $1.00 and 25 contracts at $1.01. The net price that the customer paid for the contracts would be $2.005 ((25 * $2.00 + 25 * $2.01)/50)).

Participant until the Public Customer Order(s) resting in the BOX Book and/or Complex Order Book on either side of the market trades.[10] This exception is consistent with the Exchange's allocation and priority rules, which provide for Public Customer Orders to have priority at the best price in open outcry over QOO Orders.[11]

For example, assume a Floor Broker is looking to execute a split price Complex QOO Order at a price of 2.013 in strategy A+B for 100. Assume there is a resting Market Maker order to buy A+B at 2.01 for 50 and a resting Public Customer order to buy A+B at 2.01 for 40 resting behind it. Assume there is a resting Public Customer Order to sell at 2.02 for 1. The order would be split into 70 A+B at 2.01 and 30 A+B at 2.02 for a net price of 2.013 for the strategy. Further, assume the Floor Broker provides a book sweep size[12] of 100 contracts. Because the initiating side's quantity (30) is smaller than the required 50 contracts pursuant to proposed rule 7600(i)(3), the initiating side does not have priority over Public Customer orders on the BOX Book (the initiating side does, however, have priority over non-Public Customer orders on the BOX Book pursuant to BOX Rule 7600(i)(1)). As such, the initiating side would sweep the Public Customer order on the BOX Book up to the quantity of their first price (30) at $2.01. The initiating side would then sweep the remaining 40 Market Maker contracts on the BOX Book at $2.01. Because there are remaining Public Customer orders on both sides of the bid and offer for the strategy, the Complex QOO Order is rejected.

The Exchange also proposes that if the width of the quote for a series is $0.01, and both the bid and offer represent Implied Orders on both sides of the BOX BBO, split-price priority pursuant to this rule is not available until the Implied Orders on either side of the market trades.

For example, assume a Floor Broker is looking to execute a split price Complex QOO Order at a price of 2.005 in strategy A+B for 100. Assume there is a resting Public Customer order to buy leg A at 1.00 and a resting Public Customer order to sell leg A at 1.01. Leg B has a resting Public Customer Order to buy at 1.00 and a resting Market Maker Order to sell leg B at 1.01. The order would be split into 50 A+B at 2.01 and 50 A+B at 2.00 for a net price of 2.005 for the strategy. The strategy order for 50 A+B at 2.00 is not permitted because there is an Implied Order to buy A+B at 2.00. Additionally, a strategy order for 50 A+B at 2.01 would also not be permitted because of the Implied Order to sell A+B at 2.01. Therefore, the system will reject the Complex QOO Order entered at 2.005.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the Exchange believes the proposed rule change is appropriate as split-price functionality exists on another options exchange with a physical trading floor.[15]

The Exchange believes that allowing split-price priority pursuant to BOX Rule 7600(i)(1)(i) and BOX Rule 7600(i)(3) is reasonable and appropriate as the proposal is similar in operation to the current Complex Order priority exception[16] under the Exchange rules. This exception (which is established in the rules of many options exchanges) was intended to facilitate the trade of complex orders, which by virtue of their multi-legged composition could be more difficult to trade without a limited exception to the priority rule for one of the legs. The purpose behind the proposed split price priority for Complex QOO Orders and multi-leg QOO Orders is the same—to facilitate the execution of large orders, which by virtue of their size, multi-legged composition and the need to execute them at multiple prices may be difficult to execute without a limited exception to the priority rules. The proposed extension of the split-price priority rule to Complex QOO Orders and multi-leg QOO Orders will operate in the same manner as the complex order exception by allowing a Participant effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment even if there are orders in the book at the same price.

The proposed change is designed to induce Floor Participants to bid (offer) at better prices for an order or offer (bid) that may require execution at multiple prices (such as larger complex orders), which will result in a better average price for the originating Floor Participant (or its customer).

The Exchange believes that the proposal should lead to more aggressive quoting of Complex QOO Orders and multi-leg QOO Orders by Floor Participants, which in turn could lead to better executions for market participants. A Floor Participant might be willing to trade at a better price for a portion of a Complex QOO Order or multi-leg QOO Order if he were assured of trading with the balance of the order at the next pricing increment. As a result, Floor Brokers representing Complex QOO Orders or multi-leg QOO Orders in the trading crowd might receive better-priced executions. As such, the Exchange believes that the proposed rule change will encourage Participants on BOX's Trading Floor to bid or offer better prices, thus creating more opportunities for price improvement, which ultimately enhances competition.

Lastly, as discussed above, the Exchange notes that the proposed change is similar to functionality that exists at another options exchange with an open outcry trading floor.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal will allow it to compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges by accommodating another type of complicated order. Further, the Exchange believes that the proposed changes will not impose any burden on intramarket competition as the proposed functionality is available to all Floor Participants who wish to execute a split price Complex QOO Order or multi-leg QOO Order on the BOX Trading Floor.

[10] *See* proposed Rule 7600(i)(3)(i).

[11] *See* Rule 7600 (c) and (d).

[12] The book sweep size is the number of contracts, if any, of the initiating side of the QOO Order that the Floor Broker is willing to relinquish to orders and quotes on the BOX Book that have priority pursuant to Rule 7600(d)(1) and (2). If the number of contracts on the BOX Book that have priority over the contra-side order is greater than the book sweep size, then the QOO Order will be rejected. If the number of contracts on the BOX Book that have priority over the contra-side order is less than or equal to the book sweep size, then the QOO Order will execute. *See* BOX Rule 7600(h).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 4.

[16] *See* BOX Rule 7240(b)(2). A Complex Order may be executed at a net credit or debit price with one other Participant; provided, however, that the price of at least one leg of the Complex Order must trade at a price that is better than the corresponding bid or offer in the market place by at least one minimum trading increment.

[17] *See supra* note 4.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2019–24 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–BOX–2019–24. 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–BOX–2019–24 and should be submitted on or before September 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–18380 Filed 8–26–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86724; File No. SR-CboeBZX–2019–075]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 14.11(i) Relating to Generic Listing Standards for Managed Fund Shares

August 21, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(6) thereunder.[3] On August 20, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to Rule 14.11(i), (''Managed Fund Shares'') specifically relating to generic listing standards for Managed Fund Shares applicable to holdings in fixed income securities.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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

Rule 14.11(i), Managed Fund Shares, sets forth generic listing standards for listing and trading of Managed Fund Shares on the Exchange.[5] The Exchange specifically proposes to amend Rule 14.11(i)(4)(C)(ii)(e), as described below in a manner substantively identical to a proposal that has already been approved by the Commission.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii); 17 CFR 240.19b–4(f)(6).

[4] In Amendment No. 1, the Exchange amended Item 2(a) of the proposed rule change to state that ''The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on August 7, 2019.''

[5] The Commission approved Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

[6] *See* Securities Exchange Act Release No. 86017 (June 3, 2019), 84 FR 26711 (June 7, 2019) (SR–

Continued

Proposed Amendment to Rule 14.11(i)(4)(C)(ii)(e)

Exchange Rule 14.11(i)(4)(C)(ii) sets forth generic listing standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares.[7] Exchange Rule 14.11(i)(4)(C)(ii)(e) provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities (''ABS'' and, collectively, ''non-agency ABS'') components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. The Exchange proposes to amend Rule 14.11(i)(4)(C)(ii)(e) by deleting the words ''fixed income portion'' to provide that such 20% limitation would apply to the entire portfolio rather than to only the fixed income portion of the portfolio. Thus, Rule 14.11(i)(4)(C)(ii)(e) would provide that non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

The Exchange believes this amendment is appropriate because the investment of a series of Managed Fund Shares in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. The Exchange notes that application of the 20% limitation only to the fixed income portion of a fund's portfolio may impose a much more restrictive percentage limit on permitted holdings of non-agency ABS for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. For example, a fund holding 100% of its assets in fixed income securities can hold 20% of its entire portfolio's weight in non-agency ABS. In contrast, a fund holding 25% of its assets in fixed income securities, 25% in U.S Component Stocks, and 50% in cash and cash equivalents is limited to a 5% (25% * 20% = 5%) allocation to non-agency ABS. The Exchange, therefore, believes application of the 20% limitation to a fund's entire portfolio would be more equitable for Managed Fund Shares issuers with different investment objectives and holdings.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-agency, non-GSE and other privately issued ABS and mortgage-backed securities (''MBS'').[8] In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.[9] Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio in Rule 14.11(i)(4)(C)(ii)(e) to a fund's total assets. Non-agency ABS would otherwise satisfy all generic listing requirements of Exchange Rule 14.11(i)(4)(C)(ii).

The Exchange believes the proposed amendments will provide issuers of Managed Fund Shares with additional investment choices for fund portfolios for issues permitted to list and trade on the Exchange pursuant to Rule 19b–4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in series of Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange notes that the Exchange or Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, would communicate as needed regarding trading in Managed Fund Shares with other markets and other entities that are members of the Intermarket Surveillance Group, and the Exchange or FINRA, on behalf of the Exchange, or both, could obtain trading information regarding trading in Managed Fund Shares from such markets and other entities. In addition, the Exchange could obtain information regarding trading in Managed Fund Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the proposed amendment to Rule 14.11(i)(4)(C)(ii)(e), the Exchange believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. As noted above, application of the 20% limitation to only the fixed income portion of a fund's portfolio may impose a much lower percentage limit on permitted holdings of non-agency ABS

NYSEArca-2019–06) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Certain Generic Listing Standards for Managed Fund Shares Applicable to Holdings of Fixed Income Securities) (the ''Prior Approval'').

[7] Rule 14.11(i)(4)(C)(ii) provides that fixed income securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

[8] *See, e.g.,* Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR–NYSEArca–2015–111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR–NYSEArca–2014–107) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR–NYSEArca–2014–134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MBS and other ABS, without any limit on the type of such MBS and ABS).

[9] *See* Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. The Exchange, therefore, believes application of the 20% limitation to a fund's entire portfolio would be more equitable for Managed Fund Shares issuers with different investment objectives and holdings.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-agency, non-GSE and other privately issued ABS and MBS.[12] In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed more than 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.[13] Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio in Exchange Rule 14.11(i)(4)(C)(ii)(e) to a fund's total assets. Non-agency ABS would otherwise satisfy all generic listing requirements of Exchange Rule 14.11(i)(4)(C)(ii).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would permit Exchange listing and trading under Rule 19b–4(e) of additional types of Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace.

[12] *See* note 8, *supra.*

[13] *See* note 9, *supra.*

[14] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing, which would allow the Exchange to immediately apply the proposed rule to Managed Fund Shares generically-listed on the Exchange. The Exchange also noted that the Commission has previously approved a substantively identical proposal by another national securities exchange.[19] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change, as modified by Amendment No. 1, operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See supra* note 6.

[20] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeBZX–2019–075 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-CboeBZX-*2019–075.* 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–CboeBZX–2019–075 and should be submitted on or before September 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–18384 Filed 8–26–19; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16087 and #16088; New Jersey Disaster Number NJ–00054]

Administrative Declaration of a Disaster for the State of New Jersey

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New Jersey dated 08/20/2019.

Incident: Severe Weather and Flooding.

Incident Period: 06/19/2019 through 06/20/2019.

DATES: Issued on 08/20/2019.

Physical Loan Application Deadline Date: 10/21/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/20/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Burlington, Camden, Gloucester

Contiguous Counties:

New Jersey: Atlantic, Cumberland, Mercer, Monmouth, Ocean, Salem.

Delaware: New Castle.

Pennsylvania: Bucks, Delaware, Philadelphia.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners Without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16087 6 and for economic injury is 16088 0.

The States which received an EIDL Declaration # are New Jersey, Delaware, Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–18406 Filed 8–26–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16091 and #16092; Pennsylvania Disaster Number PA–00100]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 08/20/2019.

Incident: Flash Flooding.

Incident Period: 07/19/2019 through 07/20/2019.

DATES: Issued on 08/20/2019.

Physical Loan Application Deadline Date: 10/21/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/20/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clarion.

Contiguous Counties:

Pennsylvania: Armstrong, Butler, Forest, Jefferson, Venango.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16091 6 and for economic injury is 16092 0.

The Commonwealth which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–18404 Filed 8–26–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 10852]

30-Day Notice of Proposed Information Collection: Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor Under Age 16

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to September 26, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16.
- *OMB Control Number:* 1405–0216.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–5525.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 37,451.
- *Estimated Number of Responses:* 37,451.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 18,726 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected on the DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16'', is used in conjunction with the DS–11, ''Application for a U.S. Passport''. The DS–5525 can serve as the statement describing exigent or special family circumstances, which is required if written consent of the non-applying parent or guardian cannot be obtained when the passport application is executed for a minor under age 16.

Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16''. Passport applicants can either download the DS–5525 from the internet or obtain the form from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's DS–11, ''Application for a U.S. Passport''.

Rachel M. Arndt,

Deputy Assistant Secretary for Passport Services.

[FR Doc. 2019–18346 Filed 8–26–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 10854]

30-Day Notice of Proposed Information Collection: Supplemental Questionnaire To Determine Identity for a U.S. Passport

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to September 26, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Supplemental Questionnaire to Determine Identity for a U.S. Passport.
- *OMB Control Number:* 1405–0215.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–5520.
- *Respondents:* United States Citizens and Nationals.
- *Estimated Number of Respondents:* 21,891.
- *Estimated Number of Responses:* 21,891.
- *Average Time per Response:* 45 minutes.
- *Total Estimated Burden Time:* 16,418 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The primary purpose for soliciting this information is to establish identity for a U.S. Passport Book or Passport Card. The information may also be used in connection with issuing other travel documents or evidence of citizenship, and in furtherance of the Secretary's responsibility for the protection of U.S. nationals abroad and to administer the passport program.

Methodology

The supplemental Questionnaire to Determine Identity for a U.S. Passport is used to supplement an existing passport application and solicits information relating to the respondent's identity that is needed prior to passport issuance. The form is only available from Department facilities and is not available on the Department's website.

Rachel Arndt,

Deputy Assistant Secretary for Passport Services.

[FR Doc. 2019–18395 Filed 8–26–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 10864]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Keir Collection of Art of the Islamic World" Exhibitions

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in multiple exhibitions of the Keir Collection of Art of the Islamic World, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Dallas Museum of Art, in Dallas, Texas, and at possible additional exhibitions or venues yet to be determined, from on or about August 23, 2019, until on or about August 31, 2024, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–18543 Filed 8–26–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 10853]

30-Day Notice of Proposed Information Collection: Statement of Consent: Issuance of a U.S. Passport to a Minor

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to September 26, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Statement of Consent: Issuance of a U.S. Passport to a Minor.

• *OMB Control Number:* 1405–0129.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO/CR).

• *Form Number:* DS–3053.

• *Respondents:* Individuals.

• *Estimated Number of Respondents:* 523,213.

• *Estimated Number of Responses:* 523,213.

• *Average Time per Response:* 20 minutes.

• *Total Estimated Burden Time:* 174,404 hours.

• *Frequency:* On occasion.

• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected on the DS–3053 is used to facilitate the issuance of passports to U.S. citizens and nationals under age 18. The primary purpose of soliciting the information is to ensure that parents and/or guardians consent to the issuance of a passport to a minor when required by 22 CFR 51.28.

Methodology

The Department collects information from the parents or legal guardians of U.S. national minors when they complete and submit the Statement of Consent: Issuance of a Passport to a Minor. Passport applicants can either download the DS–3053 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's DS–11, Application for a U.S. Passport.

Rachel Arndt,

Deputy Assistant Secretary for Passport Services.

[FR Doc. 2019–18358 Filed 8–26–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 10827]

Updating the State Department's List of Entities and Subentities Associated With Cuba (Cuba Restricted List)

Correction

In notice document 2019–15929 appearing on pages 36154–36156 in the issue of Friday, July 26, 2019, make the following corrections:

1. On page 36156 in the first column, lines one and two, ''Casa Editorial Verde Olivo Effective July 26, 2019'' should not have been indented when published.

2. On page 36156 in the first column, lines 26 and 27 ''Editorial Capitán San Luis Effective July 26, 2019'' should have printed on its own a separate line.

3. On page 36156 in the first column, line 37, ''Ferretería TRASVAL'' should have printed on its own a separate line.

4. On page 36156 in the first column, lines 39 and 40, ''Impresos de Seguridad'' should have printed on its own a separate line.

[FR Doc. C1–2019–15929 Filed 8–26–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Intent To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property for interim non-aeronautical use; Fairbanks International Airport (FAI), Fairbanks, Alaska.

SUMMARY: The FAA proposes to rule and invites public comment on the interim release of the aeronautical use only provision for land at the Fairbanks International Airport, Fairbanks, Alaska.

DATES: Comments must be received on or before September 26, 2019.

ADDRESSES: Documents are available for review by appointment at the FAA Anchorage Airports Regional Office, Molly Lamrouex, Compliance Manager, 222 W 7th Avenue, Anchorage, AK. Telephone: (907) 271–5439/Fax: (907) 271–2851 and the Fairbanks International Airport, 6450 Airport Way, Suite 1, Fairbanks, AK 99709. Telephone: (907) 474–2549.

Written comments on the Sponsor's request must be delivered or mailed to: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Airports Anchorage Regional Office, 222 W 7th Avenue, Anchorage AK 99513, Telephone Number: (907) 271–5439/ FAX Number: (907) 271–2851.

FOR FURTHER INFORMATION CONTACT: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Alaskan Region Airports District Office, 222 W 7th Avenue, Anchorage, AK 99513. Telephone Number: (907) 271–5439/FAX Number: (907) 271–2851.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release the aeronautical use only grant provision for a portion of Block 101, Lot 3A at the Fairbanks Airport (FAI) under the provisions of 49 U.S.C. 47107(h)(2). The Alaska Department of Transportation and Public Facilities has requested from the FAA that a portion of airport property already in use as a restaurant (East Ramp Pizza) be retroactively released for non-aeronautical use. The East Ramp Pizza restaurant is located on the second story of a commercial aviation business in a tenant space that has historically been difficult to lease. The FAA is proposing to approve the interim non-aeronautical lease at the aeronautical lease rate in consideration of the low demand for the space. The FAA has determined that the release of the property will not adversely impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than 30 days after the publication of this notice.

The disposition of proceeds from the non-aeronautical use of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Issued in Anchorage, Alaska, on August 21, 2019.

Matthew K. Stearns,

Acting Director, Alaskan Airports Regional Office, FAA, Alaskan Region.

[FR Doc. 2019–18347 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Intent To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property for non-aeronautical use; Fairbanks International Airport (FAI), Fairbanks, Alaska.

SUMMARY: The FAA proposes to rule and invites public comment on the release of the aeronautical use only provision for land at the Fairbanks International Airport, Fairbanks, Alaska.

DATES: Comments must be received on or before September 26, 2019.

ADDRESSES: Documents are available for review by appointment at the FAA Anchorage Airports Regional Office, Molly Lamrouex, Compliance Manager, 222 W 7th Avenue, Anchorage, AK. Telephone: (907) 271–5439/Fax: (907) 271–2851 and the Fairbanks International Airport, 6450 Airport Way, Suite 1, Fairbanks, AK 99709. Telephone: (907) 474–2549.

Written comments on the Sponsor's request must be delivered or mailed to: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Airports Anchorage Regional Office, 222 W 7th Avenue, Anchorage, AK 99513. Telephone Number: (907) 271–5439/ FAX Number: (907) 271–2851.

FOR FURTHER INFORMATION CONTACT: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Alaskan Region Airports District Office, 222 W 7th Avenue, Anchorage, AK 99513. Telephone Number: (907) 271–5439/FAX Number: (907) 271–2851.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release the aeronautical use only grant provision for Block 120, consisting of approximately 104,200 square feet (2.4 acres), at the Fairbanks Airport (FAI) under the provisions of 49 U.S.C. 47107(h)(2). The Alaska Department of Transportation and Public Facilities has requested from the FAA that a portion of airport property already in use as a land farm to remediate contaminated soil be retroactively released for non-

aeronautical use. The land farm is accepting contaminated soil for remediation to facilitate on-airport development and has been approved by the Alaska Department of Environmental Conservation. The FAA has determined that the release of the property will not adversely impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than 30 days after the publication of this notice.

The disposition of proceeds from the non-aeronautical use of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Issued in Anchorage, Alaska, on August 21, 2019.

Matthew K. Stearns,

Acting Director, Alaskan Airports Regional Office, FAA, Alaskan Region.

[FR Doc. 2019–18349 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0167]

Electronic Logging Device Technical Specification Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: FMCSA announces a public meeting to discuss the technical specifications in Appendix A to Subpart B of part 395, Functional Specifications for All Electronic Logging Devices (ELDs), as published in the ''Electronic Logging Devices and Hours of Service Supporting Documents'' final rule (ELD Rule). This meeting will be a forum for discussion of the minimum requirements for ELDs and is being held to help manufacturers produce ELDs that will comply with the ELD Rule.

DATES: The public meeting will take place on Friday, September 6, 2019, from 9:30 a.m. to 1:00 p.m., Eastern time. A copy of the agenda will be available in advance of the meeting at *https://www.eventbrite.com/e/electronic-logging-device-technical-specification-public-meeting-tickets-65180373251.*

ADDRESSES: The meeting will be held at the U.S. DOT Headquarters Building, 1200 New Jersey Avenue SE, Washington, DC 20590. Those interested in attending this public meeting must register at: *https://www.eventbrite.com/e/electronic-logging-device-technical-specification-public-meeting-tickets-65180373251* by September 1, 2019. Attendees should arrive at the U.S. DOT Headquarters Building by 8:30 a.m. to allow sufficient time to clear security. FMCSA requests that questions be submitted in advance to *ELD@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Donnice Wagoner, Transportation Specialist, Enforcement Division, FMCSA. Ms. Wagoner may be reached at 202–366–3096 and by email at *eld@dot.gov.* Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Donnice Wagoner at 202–366–3096 or by email at *Donnice.wagoner@dot.gov* by September 1, 2019.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 2015, FMCSA published in the **Federal Register** a final rule concerning ELDs (80 FR 78292–78416, Docket No. FMCSA–2010–0167).[1] The final rule included detailed performance and design requirements for ELDs to ensure the devices produce accurate, tamper-resistant records with a uniform file format and consistent displays.

The technical specifications from the ELD Rule are codified in Appendix A to Subpart B of part 395 of Title 49 of the Code of Federal Regulations. ELD manufacturers are required to self-certify that their devices comply with the ELD Rule and register the devices with FMCSA. Motor carriers subject to the ELD Rule were required to operate registered ELDs by the compliance date of December 18, 2017. However, motor carriers that operated with automatic onboard recording devices (AOBRDs) prior to December 18, 2017, and that are subject to the ELD Rule, have until December 16, 2019, to transition from AOBRDs to ELDs. A list of self-certified and registered ELDs can be found at *https://eld.fmcsa.dot.gov/list.*

Meeting Information

This meeting is intended for representatives of ELD vendors to present questions and discuss issues related to the transition from AOBRDs to ELDs, to discuss the data transfer process and related technical questions, and present other issues unique to the ELD vendor community. The meeting agenda is available on the registration site (see **ADDRESSES** above for instructions on registration).

Issued on August 21, 2019.

Raymond P. Martinez.

Administrator.

[FR Doc. 2019–18417 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] You may view the docket and supporting documentation at *https://www.regulations.gov/docket?D=FMCSA-2010-0167.*

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Meeting of the Transit Advisory Committee for Safety (TRACS)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Transit Advisory Committee for Safety (TRACS).

DATES: The meeting will be held on September 9, 2019, from 9:00 a.m. to 4:30 p.m., and September 10, 2019, from 9:00 a.m. to 2:00 p.m., Eastern Daylight Time (EDT).

Requests to attend the meeting must be received by September 4, 2019. Less than the requisite fifteen-day notice is given due to technical issues related to submission of this Notice.

Requests for accommodations to a disability must be received by August 30, 2019. Requests to speak during the meeting must submit a written copy of their remarks to DOT by September 4, 2019.

Requests to submit written materials to be reviewed during the meeting must be received no later than September 4, 2019.

ADDRESSES: The meeting will be held at the National Highway Institute (NHI), 1310 North Courthouse Road, Arlington, Virginia 22201. Any committee related requests should be sent by email to *TRACS@dot.gov.* A copy of the meeting minutes will be available on the TRACS web page at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.* A final agenda will be posted on the TRACS web page at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs* one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, (202) 366–1783, *Henrika.Buchanan@dot.gov;* or Kara Waldrup, Program Analyst, FTA Office of Transit Safety and Oversight, (202) 366–7273, *Kara.Waldrup@dot.gov;* or *TRACS@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The TRACS was created by the Secretary of Transportation in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C. App. 2) to provide information, advice, and recommendations to the Secretary and FTA Administrator on matters relating to the safety of public transportation systems.

II. Agenda

- Welcome Remarks/Introductions
- Facility Use/Safety Briefing
- Review of TRACS Tasks and Work Plan
- Safety Focus Area Presentations
- Safety Focus Area—Small Group Discussions
- Safety Focus Area—Large Group Discussion
- Future TRACS Activities
- Public Comments
- Summary of Deliverables/Concluding Remarks

III. Public Participation

The meeting will be open to the public on a first-come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register via email by submitting their name and affiliation to the email address listed in the **ADDRESSES** section. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **ADDRESSES** section.

There will be a total of 60 minutes allotted for oral comments from members of the public at the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, to include the individual's name, address, and organizational affiliation to the person listed in the **ADDRESSES** section.

Written comments for consideration by TRACS during the meeting must be submitted no later than the deadline listed in the **DATES** section, to ensure transmission to TRACS members prior to the meeting. Comments received after that date will be distributed to the members but may not be reviewed prior to the meeting.

Issued in Washington, DC.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2019–18422 Filed 8–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0138]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ALEXANDRA (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0138 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0138 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0138, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ALEXANDRA is:

—*Intended Commercial Use of Vessel:* ''Sport Fishing Charter''

—*Geographic Region Including Base of Operations:* ''Puerto Rico'' (Base of Operations: Cangrejos, PR)

—*Vessel Length and Type:* 31′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0138 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0138 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(*Authority:* 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: August 22, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–18397 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0139]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LION HEART (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0139 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0139 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0139, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LION HEART is:

—*Intended Commercial Use of Vessel:* ''Carrying passengers for hire. We will be focusing on sailing, and eco-tourism experiences.''

—*Geographic Region Including Base of Operations:* ''Washington and Alaska (excluding waters in Southeastern Alaska)'' (Base of Operations: Indianola, WA).

—*Vessel Length and Type:* 40′ sailing catamaran.

The complete application is available for review identified in the DOT docket as MARAD–2019–0139 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0139 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the

information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: August 22, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2019–18400 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0141]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DRAGONFLY (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0141 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0141 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0141, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DRAGONFLY is:

—*Intended Commercial Use of Vessel:* ''Crewed charter for no more than 6 people.''

—*Geographic Region Including Base of Operations:* ''Washington State'' (Base of Operations: Anacortes, WA)

—*Vessel Length and Type:* 42′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019 0141 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0141 or visit the Docket Management Facility (see **ADDRESSES** for hours of peration). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without

edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(*Authority:* 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: August 22, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–18399 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0135]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel COPPELIA (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0135 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0135 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0135, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel COPPELIA is:

— *Intended Commercial Use of Vessel:* ''Private Vessel Charters, Passengers Only''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, East Coast of Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: Kaneohe, HI)

—*Vessel Length and Type:* 63′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0135 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0135 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether

or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(*Authority:* 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: August 22, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–18398 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0140]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DAY DREAMIN' (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 26, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0140 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2019–0140 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0140, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DAY DREAMIN' is:

—*Intended Commercial Use of Vessel:* ''Recreational Charters''

—Geographic Region Including Base of Operations: ''Florida, Delaware, Maryland, Massachusetts, New York (excluding New York Harbor), New Jersey'' (Base of Operations: Dania Beach, FL)

—*Vessel Length and Type:* 75′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0140 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2019–0140 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(*Authority:* 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: August 22, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration

[FR Doc. 2019–18402 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0137]

Request for Comments on the Approval of a new Proposed Information Collection: Capital Construction Fund and Exhibits

AGENCY: Maritime Administration, DOT

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collected information is necessary for MARAD to determine an applicant's eligibility to enter into a CCF Agreement. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before October 28, 2019.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2019–0028] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, 202–366–1859, Maritime Administration, Office of Financial Approvals, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2321 or E–MAIL: *dan.ladd@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title: Capital Construction Fund and Exhibits.

OMB Control Number: 2133–0027.

Type of Request: Renewal of a previously approved Information Collection.

Abstract: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under 46 U.S.C. Chapter 535 and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Respondents: 143.

Affected Public: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Estimated Number of Respondents: 143.

Estimated Number of Responses: 143.

Estimated Hours per Response: 13.5.

Annual Estimated Total Annual Burden Hours: 1931.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: August 22, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2019–18401 Filed 8–26–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Application Form for U.S. Department of the Treasury Accountable Official Stored Value Card (SVC) Program

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Application Form for U.S. Department of the Treasury Accountable Official Stored Value Card (SVC) Program.

DATES: Written comments should be received on or before October 28, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application Form for U.S. Department of the Treasury Accountable Official Stored Value Card (SVC) Program.

OMB Number: 1530–0020.

Form Number: FS Form 2888.

Abstract: This form is used to collect information from accountable officials requesting enrollment in the Treasury SVC program in their official capacity, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts, and to facilitate collection of any delinquent amounts that may become due and yet to be paid as a result of the use of the cards.

This information is collected under the authority in: 31 U.S.C. 321, General Authority of the Secretary of the Treasury; Public Law 104–134, Debt Collection Improvement Act of 1996, as amended; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, as amended; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 1322, Payments of unclaimed trust fund amounts and refund of amounts erroneously deposited; 31 U.S.C. 3720, Collection of payments; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 31 U.S.C. 7701, Taxpayer identifying number; 37 U.S.C. 1007, Deductions from pay; 31 CFR part 210, Federal Government Participation in the Automated Clearing House; 31 CFR part 285, Debt Collection Authorities under the Debt Collection Improvement Act of 1996; and E.O. 9397 (SSN), as amended.

The information on this form may be disclosed as generally permitted under

5 U.S.C. 552(a)(b) of the Privacy Act of 1974, as amended. It may be disclosed outside of the U.S. Department of the Treasury to its Fiscal and Financial Agents and their contractors involved in providing SVC services, or to the Department of Defense (DoD) for the purpose of administering the Treasury SVC programs. In addition, other Federal, State, or local government agencies that have identified a need to know may obtain this information for the purpose(s) as identified by Fiscal Service's Routine Uses as published in the **Federal Register**.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 22, 2019.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2019–18393 Filed 8–26–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Request To Reissue United States Savings Bonds

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Request to Reissue United States Savings Bonds.

DATES: Written comments should be received on or before October 28, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request to Reissue United States Savings Bonds.

OMB Number: 1530–0025.

Form Number: FS Form 4000.

Abstract: The information is requested to support a request to reissue paper (definitive) Series EE, HH, and I United States Savings Bonds; Retirement Plan Bonds; and Individual Retirement Plan Bonds and to indicate the new registration required.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 38,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 19,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 21, 2019.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2019–18394 Filed 8–26–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for the Employer-Designed Tip Reporting Program for the Food and Beverage Industry.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Notice 2001–1, Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

DATES: Written comments should be received on or before October 28, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer-Designed Tip Reporting Program (EmTRAC) for the Food and Beverage Industry.

OMB Number: 1545–1716.

Form Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to the burden previously approved by

OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 44 hours.

Estimated Total Annual Burden Hours: 870.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: August 19, 2019.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2019–18416 Filed 8–26–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Geriatrics and Gerontology Advisory Committee (GGAC) will conduct a public meeting on Tuesday, September 17–Wednesday, September 18, 2019 at 810 Vermont NW, Room 630, Washington, DC. The meeting sessions will begin and end as follows:

Date	Time
September 17, 2019	1:00 p.m. to 5:00 p.m.
September 18, 2019	8:00 a.m. to 3:30 p.m.

The meeting sessions are open to the public.

The Geriatrics and Gerontology Advisory Committee advises the Secretary and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee's areas of interest include but are not limited to: (1) Assessing the capability of VA health care facilities (including facilities designated as Geriatric Research, Education, and Clinical Centers) to respond with the most effective and appropriate services possible to the medical, psychological and social needs of older Veterans; and (2) advancing scientific knowledge to meet those needs by enhancing geriatric care for older Veterans through geriatric and gerontology research, the training of health personnel in the provision of health care to older individuals, and the development of improved models of clinical services for older Veterans.

Committee members will meet with members of VHA leadership, Geriatrics and Extended Care leadership, and receive updates and or presentations on the following subjects: CERNER/EHR Migration, the MISSION Act, Choose Home, HR Recruitment and Retention, and Geriatric, Research, and Clinical Centers.

Members of the public may submit written statements for the Committee's review to Alejandra Paulovich, Designated Federal Officer (DFO) at *Alejandra.Paulovich@va.gov.* Any member of the public and media planning to attend or seeking additional information should notify Alejandra Paulovich, DFO, at (202) 461–6016, or *Alejandra.Paulovich@va.gov.*

Dated: August 22, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–18423 Filed 8–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on Thursday October 3, 2019, and Friday October 4, 2019, at The Hyatt Regency San Francisco Airport, Cypress Room A, 1333 Bayshore Highway, Burlingame, CA 94010. On Thursday the meeting will convene at 9 a.m. and end at 5 p.m. (PDT). On Friday the meeting will convene at 8:30 a.m. and end at 12:00 p.m. (EST). All sessions will be open to the public, and for interested parties who cannot attend in person, there is a toll-free telephone number (800) 767–1750; access code 56978# or Adobe Connect URL: *http://va-eerc-ees.adobeconnect.com/racgwvi-oct 2019/.*

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of operations during the Gulf War in 1990–1991.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Presentations will include updates on the VA Gulf War research program, presentations from VA-funded researchers and subject matter experts in the areas of health and generational effects of serving in the Gulf War. Also, there will be Committee training and a discussion of Committee business and activities.

The meeting will include time reserved for public comments 30 minutes before close of meeting. A signup sheet for 5-minute comments will be available at the meeting. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may submit

written statements for the Committee's review or seek additional information by contacting Dr. Block, Designated Federal Officer, at (202) 443–5600, or by email at *karen.block@va.gov.*

Dated: August 21, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–18343 Filed 8–26–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Veterans Rural Health Advisory Committee will meet at Partnership for Public Service, 1100 New York Ave. NW, Suite 200 East, Washington, DC 20005 on September 25–26. Both meeting sessions will begin at 8:45 a.m. (EST) each day and adjourn at 5:00 p.m. (EST). The meetings are open to the public. The purpose of the Committee is to advise the Secretary of Veterans Affairs on rural health care issues affecting Veterans. The Committee examines programs and policies that impact the delivery of VA rural health care to Veterans and discusses ways to improve and enhance VA access to rural health care services for Veterans.

The agenda will include updates from Department leadership, the Executive Director Office of the VA Office of Rural Health and the Committee Chairman, as well as presentations on general rural health care access.

Public comments will be received at 4:30 p.m. on September 26, 2019. Interested parties should contact Ms. Judy Bowie, via email at *VRHAC@va.gov,* or by mail at 810 Vermont Avenue NW (10P1R), Washington, DC 20420. Individuals wishing to speak are invited to submit a 1–2-page summary of their comment for inclusion in the official meeting record. Any member of the public seeking additional information should contact Ms. Bowie at the phone number or email address noted above.

Dated: August 21, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–18341 Filed 8–26–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0270]

Agency Information Collection Activity Under OMB Review: Financial Counseling Statement.

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 26, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0270'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0270'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Financial Counseling Statement, VA Form 26–8844.

OMB Control Number: 2900–0270.

Type of Review: Reinstatement of a previously approved collection.

Abstract: This form was developed under 38 U.S.C. 3732. VA Form 26–8844 provides for recording comprehensive financial information concerning the borrower's net income, total expenditures, net worth, suggested areas for which expenses can be reduced or income increased, the arrangement of a family budget and recommendations for the terms of any repayment agreement on the defaulted loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR118 on June 19, 2019, pages 28627 and 28628.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3750 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5000.

By direction of the Secretary.

Danny Green,

VA Interim Clearance Officer, Office of Quality, Performance, and Risk, Department of Veterans Affairs.

[FR Doc. 2019–18419 Filed 8–26–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Cemeteries and Memorials

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), National Cemetery Administration (NCA), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Cemeteries and Memorials (herein-after in this section referred to as ''the Committee'').

DATES: Nominations of qualified candidates are being sought to fill possible upcoming vacancies on the Committee. Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on September 13, 2019.

ADDRESSES: All nominations should be mailed to National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, (40A1), Washington, DC 20420, or faxed to (202) 273–6709.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Hamilton, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, (40A1), Washington, DC 20420, telephone (202) 461–5681. A copy of Committee charter and list of the current membership can be obtained by contacting Ms. Hamilton or by accessing the website managed by NCA at: *http://www.cem.va.gov/cem/about/advisory_committee.asp.*

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include:

(1) Advising the Secretary on VA's administration of burial benefits and the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits;

(2) Providing to the Secretary and Congress periodic reports outlining recommendations, concerns, and observations on VA's delivery of these benefits and services to Veterans;

(3) Meeting with VA officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing burial benefits and outreach on these benefits to Veterans and their dependents;

(4) Undertaking assignments to conduct research and assess existing burial and memorial programs; to examine potential revisions or expansion of burial and memorial programs and services; and to provide advice and recommendations to the Secretary based on this research.

Authority: The Committee is authorized by 38 U.S.C. 2401 to provide advice to the Secretary of VA with respect to the administration of VA national cemeteries, soldiers' lots and plots, which are the responsibility of the Secretary, the erection of appropriate memorials and the adequacy of Federal burial benefits. The Secretary shall determine the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed three years. The Secretary may reappoint any such member for additional terms of service.

Membership Criteria and Qualification: NCA is requesting nominations for upcoming vacancies on the Committee. The Committee is composed of up to twelve members and several ex-officio members.

The members of the Committee are appointed by the Secretary of Veteran Affairs from the general public, including but not limited to:

(1) Veterans or other individuals who are recognized authorities in fields pertinent to the needs of Veterans;

(2) Veterans who have experience in a military theater of operations;

(3) Recently separated service members;

(4) Officials from Government, non-Government organizations (NGOs) and industry partners in the provision of memorial benefits and services, and outreach information to VA beneficiaries.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications, including but not limited to prior military experience and military deployments, experience working with Veterans, and experience in large and complex organizations, and subject matter expertise in the areas described above. We ask that nominations include information of this type so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating the willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae; and

(4) A summary of the nominee's experience and qualifications relative to the membership considerations described above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of VA federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identify, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: August 22, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–18424 Filed 8–26–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 166 August 27, 2019

Part II

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 402

Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. FWS–HQ–ES–2018–0009; FXES11140900000–189–FF09E300000; Docket No. 180207140–8140–01; 4500090023]

RIN 1018–BC87; 0648–BH41

Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: FWS and NMFS (collectively referred to as the ''Services'' or ''we'') revise portions of our regulations that implement section 7 of the Endangered Species Act of 1973, as amended (''Act''). The revisions to the regulations clarify, interpret, and implement portions of the Act concerning the interagency cooperation procedures.

DATES: This final rule is effective on September 26, 2019.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2018–0009. Comments and materials we received on the proposed rule, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Frazer, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone 202/208–4646; or Samuel D. Rauch, III, National Marine Fisheries Service, Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/427–8000. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title 50, part 402, of the Code of Federal Regulations establishes the procedural regulations governing interagency cooperation under section 7 of the Act, which requires Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce (the ''Secretaries''), to insure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species.

On July 25, 2018, the Services published a proposed rule to amend our regulations that implement section 7 of the Act (83 FR 35178). The proposed rule addressed alternative consultation mechanisms; the definitions of ''destruction or adverse modification'' and ''effects of the action''; certainty of measures proposed by action agencies to avoid, minimize, or offset adverse effects; and other improvements to the consultation process. The proposed rule also sought comment on: The advisability of addressing several other issues related to implementing section 7 of the Act; the extent to which the proposed changes outlined would affect timeframes and resources needed to conduct consultation; anticipated cost savings resulting from the proposed changes; and any other specific changes to any provisions in part 402 of the regulations. The proposed rule requested that all interested parties submit written comments on the proposal by September 24, 2018. The Services also contacted Federal and State agencies, certain industries regularly involved in Act section 7(a)(2) consultation, Tribes, nongovernmental organizations, and other interested parties and invited them to comment on the proposal.

In this final rule, we focus our discussion on changes from the proposed regulation revisions, including changes based on comments we received during the comment period. For background relevant to these regulations, we refer the reader to the proposed rule (83 FR 35178, July 25, 2018).

This final rule is one of three related final rules that the agencies are publishing in this issue of the **Federal Register.** All of these documents finalize revisions to various regulations that implement the Act. The revisions to the regulations in this rule are prospective; they are not intended to require that any previous consultations under section 7(a)(2) of the Act be reevaluated at the time this final rule becomes effective (see **DATES**, above).

Final Regulatory Revisions

Discussion of Changes From Proposed Rule

Below, we discuss the changes between the proposed regulatory text and regulatory text that we are finalizing with this rule. We did not revise the regulatory text between the proposed and final rules for the definitions of ''Destruction or adverse modification,'' ''Director,'' and ''Programmatic consultation''. Therefore, we do not address those definitions within this portion of the preamble.

Section 402.02—Definitions

Definition of ''Effects of the Action''

The Services proposed to revise the definition of ''effects of the action'' in a manner that simplified the definition by collapsing the terms ''direct, ''indirect,'' interrelated,'' and ''interdependent'' and by applying a two-part test of ''but for'' and ''reasonably certain to occur.''

Effects of the action was proposed to be defined as all effects on the listed species or critical habitat that are caused by the proposed action, including the effects of other activities that are caused by the proposed action. An effect or activity is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include effects occurring outside the immediate area involved in the action.

The Services requested comments on (1) the extent to which the proposed revised definition simplified and clarified the definition of ''effects of the action''; (2) whether the proposed definition altered the scope of effects considered by the Services; (3) the extent to which the scope of the proposed revised definition was appropriate for the purposes of the Act; and (4) how the proposed revised definition may be improved. We received numerous comments regarding the proposed revision to the definition of ''effects of the action,'' including the two-part test, and the scope of the definition as proposed. Some commenters felt that the proposed two-part test for both effects and activities caused by the proposed action was either inappropriate or still subject to misapplication and misinterpretation. Others were concerned that the changed definition would narrow the scope of effects of the action, resulting in unaddressed negative effects to listed species and critical habitat. As stated in the proposed rule, the Services' intended purpose of the revised definition of effects of the action was to

simplify the definition while still retaining the scope of the assessment required to ensure a complete analysis of the effects of proposed actions. Further, we stated that by revising the definition, consultations between the Services and action agencies, including consultations involving applicants, can focus on identifying the effects and not on categorizing them. The two-part test was included to provide a transparent description of how the Services identify effects of the proposed action. A summary of the comments and our responses are below at Summary of Comments and Recommendations.

In response to comments and upon further consideration, the Services are adopting a revised, final definition of ''effects of the action'' to further clarify that effects of the action include all consequences of a proposed action, including consequences of any activities caused by the proposed action. We revised the definition to read as set out in the regulatory text at the end of the document.

The principal changes we have made in this final rule include: (1) Introducing the term ''consequences'' to help define what we mean by an effect; and (2) emphasizing that to be considered the effect of the action under consultation, the consequences caused by the action would not occur but for the proposed action and must be reasonably certain to occur.

The Services believe that the definition of ''effects of the action'' contained in this final rule will reduce confusion and streamline the process by which the Services identify the relevant effects caused by a proposed action. The Services do not intend for these regulatory changes to alter how we analyze the effects of a proposed action. We will continue to review all relevant effects of a proposed action as we have in past decades, but we determined it was not necessary to attach labels to various types of effects through regulatory text. That is, we intend to capture those effects (consequences) previously listed in the regulatory definition of effects of the action—direct, indirect, and the effects from interrelated and interdependent activities—in the new definition. These effects are captured in the new regulatory definition by the term ''all consequences'' to listed species and critical habitat.

We introduced the term ''consequences,'' in part, to avoid using the term ''effects'' to define ''effects of the action''. Consequences are a result or effect of an action, and we apply the two-part test to determine whether a given consequence should be considered an effect of the proposed action that is under consultation. Requiring evaluation of all consequences caused by the proposed action allows the Services to focus on the impact of the proposed action to the listed species and critical habitat, while being less concerned about parsing what label to apply to each effect (*e.g.,* direct or indirect effect, or interdependent or interrelated activity).

As discussed in the proposed rule, the Services have applied the ''but for'' test to determine causation for decades. That is, we have looked at the consequences of an action and used the causation standard of ''but for'' plus an element of foreseeability (*i.e.,* reasonably certain to occur) to determine whether the consequence was caused by the action under consultation. In this final rule, we have added regulatory text to confirm that, by definition, ''but for'' causation means that the consequence in question would not occur if the proposed action did not go forward. This added regulatory language does not add a more stringent standard than what was applied already under our current ''but for'' causation, but is meant to clarify and reinforce the standard we currently implement and will do so in the future. Additionally, there are several relevant considerations where the proposed action is not the ''but for'' cause of another activity (not included in the proposed action) because the other activity would proceed in the absence of the proposed action due to the prospect of an alternative approach (*e.g.,* if a Federal right-of-way (proposed action) is not granted, a private wind farm on non-federal lands (other activity) would still be developed through the building of a road on private lands (alternative approach)). In particular, the Services consider case-specific information including, but not limited to, the independent utility of the other activity and proposed action, the feasibility of the alternative approach and likelihood the alternative approach would be undertaken, the existence of plans relating to the activity and whether the plans indicate that an activity will move forward irrespective of the action agency's proposed action, and whether the same effects would occur as a result of the other activity in the absence of the proposed action. In other words, if the agency fails to take the proposed action and the activity would still occur, there is no ''but for'' causation. In that event, the activity would not be considered an effect of the action under consultation.

Consequences to the species or critical habitat caused by the proposed action must also be reasonably certain to occur. The term ''reasonably certain to occur'' is not a new or heightened standard, but it was not clearly defined or given any parameters in previous regulations. Experience has taught us that the failure to provide a definition and any parameters to the term ''reasonably certain to occur'' left the concept vague and occasionally produced determinations that were inconsistent or had the appearance of being too subjective. As such, there were sometimes disagreements between the Services and action agencies as to what constituted ''reasonably certain to occur.'' Our intention in these regulations is to provide a solid framework, with specific factors for both action agencies and the Services to evaluate, in order to determine whether a consequence is ''reasonably certain to occur.'' In addition, we added a regulatory requirement that this framework be reviewed and followed by both the action agency and the Services. See § 402.17(c). When the Services write an incidental take statement for a biological opinion, under section 7(b)(4)(iv) of the Act they can assign responsibility of specific terms and conditions of the incidental take statement to the Federal action agency, the applicant, or both taking into account their respective roles, authorities, and responsibilities. The Services have worked with Federal action agencies in the past, and will continue to do so into the future, to ensure that a reasonable and prudent measure assigned to a Federal action agency does not exceed the scope of a Federal action agency's authority.

As discussed below in our discussion of changes to § 402.17, we have clarified that for a consequence or an activity to be considered reasonably certain to occur, the determination must be based on clear and substantial information. The term ''clear and substantial'' is used to describe the nature of information needed to determine that a consequence or activity is reasonably certain to occur. By clear and substantial, we mean that there must be a firm basis to support a conclusion that a consequence of an action is reasonably certain to occur. The determination of a consequence to be reasonably certain to occur must be based on solid information and should not be based on speculation or conjecture. This added term also does not mean the nature of the information must support that a consequence must be guaranteed to occur, but rather, that it must have a degree of certitude.

We revised § 402.17 to help guide the determination of ''reasonably certain to occur.'' The ''reasonably certain to occur'' determination applies to other

activities caused by (but not part of) the proposed action, activities considered under cumulative effects (as defined at § 402.02), and to the consequences caused by the proposed action. However, it does not apply to the proposed action itself, which is presumed to occur as described. First, in § 402.17(a), we discuss factors to consider when determining whether an activity is reasonably certain to occur for purposes of determining the effects of the action or which activities to include under Cumulative Effects. Second, we describe considerations for evaluating whether a consequence is reasonably certain to occur in § 402.17(b). For further explanation, please see our discussion of § 402.17, below.

We also continue to emphasize that effects may occur beyond the proposed action's footprint. This concept was reflected in the proposed rule and the final definition states that effects may include consequences occurring outside the immediate area involved in the action.

As discussed above, we articulated a two-part test for effects of the action that is consistent with our existing practice and prior interpretations. This test for determining effects includes effects resulting from actions previously referred to as ''interrelated or interdependent'' activities. In order for consequences of other activities caused by the proposed action to be considered effects of the action, both those activities and the consequences of those activities must satisfy the two-part test: They would not occur but for the proposed action and are reasonably certain to occur. As a result, when we discuss effects or effects of the action throughout the rest of this rule, we are referring only to those effects that satisfy the two-part test. For further discussion of the application of the ''reasonably certain to occur'' test to activities included within the definition of *effects of the action,* see our discussion of changes to proposed § 402.17, below.

Definition of Environmental Baseline

We proposed a stand-alone definition for ''environmental baseline'' as referenced in the discussion above in the proposed revised definition for *effects of the action.*

Environmental baseline was proposed to be defined to include the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.

In the proposed rule, we also sought comment on potential revisions to the definition of ''environmental baseline'' as it relates to ongoing Federal actions. The Services received numerous comments regarding the proposed definition of ''environmental baseline'' and the consideration of ongoing Federal actions.

In response to these comments and upon further consideration, through this final rule, we are revising the definition of ''environmental baseline'' to read as set out in the regulatory text at the end of this document.

We revised the definition of environmental baseline to make it clear that ''environmental baseline'' is a separate consideration from the effects of the action. In practice, the environmental baseline should be used to compare the condition of the species and the designated critical habitat in the action area with and without the effects of the proposed action, which can inform the detailed evaluation of the effects of the action described in § 402.14(g)(3) upon which the Services formulate their biological opinion.

In addition, we added a sentence to clarify that the consequences of ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are included in the environmental baseline. This third sentence is specifically intended to help clarify environmental baseline issues that have caused confusion in the past, particularly with regard to impacts from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify.

We added this third sentence because we concluded that it was necessary to explicitly answer the question as to whether ongoing consequences of past or ongoing activities or facilities should be attributed to the environmental baseline or to the effects of the action under consultation when the agency has no discretion to modify either those activities or facilities. The Courts and the Services have concluded that, in general, ongoing consequences attributable to ongoing activities and the existence of agency facilities are part of the environmental baseline when the action agency has no discretion to modify them. With respect to existing facilities, such as a dam, courts have recognized that effects from the existence of the dam can properly be considered a past and present impact included in the environmental baseline, particularly when the Federal agency lacks discretion to modify the dam. See, *e.g., Friends of River* v. *Nat'l Marine Fisheries Serv.,* 293 F. Supp. 3d 1151, 1166 (E.D. Cal. 2018). Having the environmental baseline include the consequences from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify is supported by the Supreme Court's conclusion in *National Ass'n of Home Builders* v. *Defenders of Wildlife,* 551 U.S. 644, 667–71 (U.S. 2007) (''Home Builders''). In that case, the Court held that it was reasonable for the Services to narrow the application of section 7 to a Federal agency's discretionary actions because it made no sense to consult on actions over which the Federal agency has no discretionary involvement or control. It follows, then, that when a Federal agency has authority for managing or operating a dam, but lacks discretion to remove or modify the physical structure of the dam, the consequences from the physical presence of the dam in the river are appropriately placed in the environmental baseline and are not considered an effect of the action under consultation.

We distinguish here between activities and facilities where the Federal agency has no discretion to modify and those discretionary activities, operations, or facilities that are part of the proposed action but for which no change is proposed. For example, a Federal agency in their proposed action may modify some of their ongoing, discretionary operations of a water project and keep other ongoing, discretionary operations the same. The resulting consultation on future operations analyzes the effects of all of the discretionary operations of the water project on the species and designated critical habitat as part of the effects of the action, even those operations that the Federal agency proposes to keep the same. We also note that the obligation is on the Federal action agency to propose actions for consultation and while they should not improperly piecemeal or segment portions of related actions, a request for consultation on one aspect of a Federal agency's exercise of discretion does not de facto pull in all of the possible discretionary actions or authorities of the Federal agency. This is a case-by-case specific analysis undertaken by the Services and the Federal action agency as needed during consultation.

Attributing to the environmental baseline the ongoing consequences from activities or facilities that are not within the agency's discretion to modify does not mean that those consequences are ignored. As discussed in more detail below, the environmental baseline is a

description of the condition of the species or the designated critical habitat in the action area. To the extent ongoing consequences are beneficial or adverse to a species, the environmental baseline evaluations of the species or designated critical habitat will reflect the impact of those consequences and the effects of the action must be added to those impacts in the Services' jeopardy and adverse modification analysis.

Section 402.13—Deadline for Informal Consultation

The Services sought comment on potentially establishing a 60-day deadline, subject to extension by mutual consent, for informal consultations. More specifically, we sought comment on (1) whether a deadline would be helpful in improving the timeliness of review; (2) the appropriate length for a deadline (if not 60 days); and (3) how to appropriately implement a deadline (*e.g.,* to which portions of informal consultation the deadline should apply [*e.g.,* technical assistance, response to requests for concurrence, etc.], when informal consultation begins, the ability to extend or ''pause the clock'' in certain circumstances, etc.).

The Services received numerous comments regarding the establishment of a deadline for informal consultation. A summary of those comments and our responses are below at Summary of Comments and Recommendations. In response to these comments and upon further consideration, through this final rule, we are revising § 402.13, Informal consultation, to read as set out in the regulatory text at the end of this document.

These changes institute a new § 402.13(c), which is a process framework for the Federal agency's written request for concurrence and the Service's response. The changes to the informal consultation process are limited to only the written request for concurrence and the Service's response. This preserves the flexibility in discussions and timing inherent in the portion of the informal consultation process that is intended to assist the Federal agency in determining whether formal consultation is required. In the new framework, we require in § 402.13(c)(1) that the written request for our concurrence should contain information similar to that required in § 402.14(c)(1) for formal consultation, but only at a level of detail sufficient for the Services to determine whether or not it concurs. Consistent with past practice, the Services determine whether the information provided by the Federal agency provides sufficient information upon which to make its determination whether to concur with Federal agency's request for concurrence. We anticipate that this level of detail will often be less than that required for the initiation of formal consultation and the evaluation of adverse effects to species and designated critical habitat. Second, we establish in § 402.13(c)(2) a timeline for the written request and concurrence process. As stated in the new § 402.13(c)(2), upon receipt of an adequate request for concurrence from a Federal agency, the Services shall provide their written response within 60 days. The 60-day response period may be extended, with the mutual consent of the Federal agency (or its designated representative) and any applicant, for up to an additional 60 days, bringing the total potential timeframe for this written request and response process to 120 days. The intent of the 60-day, and no more than 120-day, deadline is to increase regulatory certainty and timeliness for Federal agencies and applicants.

The changes at § 402.13(c) do not alter or apply to the Services' review of and response to biological assessments prepared for major construction activities, as outlined at § 402.12. For those consultations, the response would be required within 30 days, as outlined at § 402.12(j) and (k).

Section 402.14—Formal Consultation

The Services proposed several amendments to § 402.14. Consistent with the Services' existing practice, we proposed to revise § 402.14(c) to clarify what is necessary to initiate formal consultation and to allow the Services to consider documents such as those prepared pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to be considered as initiation packages, as long as they meet the requirements for initiating consultation. We also proposed to: (1) Revise portions of § 402.14(g) that describe the Services' responsibilities during formal consultation; (2) revise § 402.14(h) to allow the Services to adopt all or part of a Federal agency's initiation package, or all or part of the Services' own analyses and findings that are required to issue a permit under section 10(a) of the Act, in its biological opinion; and (3) add a new provision titled ''Expedited consultations'' at § 402.14(l) to offer opportunities to streamline consultation, particularly for actions that have minimal adverse effects or predictable effects based on previous consultation experience.

The Services received numerous comments related to our proposed amendments to § 402.14, Formal consultation, as set forth at 83 FR 35192, July 25, 2018. A summary of those comments and our responses are below at Summary of Comments and Recommendations.

In response to these comments and upon further consideration, in this final rule, we are finalizing the proposed revisions to § 402.14(g)(2) and (4) and (l), and we are amending § 402.14(c), (g)(8), and (h) to read as set out in the regulatory text at the end of this document.

The Services are making a non-substantive edit to the proposed regulatory text at § 402.14(c)(1)(iii). This non-substantive edit clarifies that the Services are referring to information about both the species and its habitat, including any designated critical habitat.

The Services are also making edits to the proposed regulatory text at § 402.14(g)(8) to simplify the text while maintaining the intent of the proposed regulatory revisions. More specifically, we are striking the proposed text that referenced ''specific'' plans and ''a clear, definite commitment of resources'' with respect to measures intended to avoid, minimize or, or offset the effects of an action. Instead, the Services are simplifying the regulatory text to indicate that such measures are considered like other portions of the action and do not require any additional demonstration of binding plans.

The simplified regulatory text avoids potential confusion between the need to sufficiently describe measures a Federal agency is committing to implement as part of a proposed action to avoid, minimize, or offset effects pursuant to § 402.14(c)(1), and how those measures are taken into consideration after consultation is initiated. Any type of action proposed by a Federal agency receives a presumption that it will occur, but it must also be described in sufficient detail that the Services can both understand the action and evaluate its adverse and beneficial effects. By eliminating the word ''specific'' in § 402.14(g)(8), we reinforce that an appropriate level of specificity regarding the description of measures included in the proposed action may be necessary to provide sufficient detail to assess the effects of the action on listed species and critical habitat. However, inclusion of measures to avoid, minimize, or offset adverse effects as part of the proposed action does not result in a requirement for an additional demonstration of binding plans. To simplify the regulatory text and improve clarity, we also eliminated the reference to ''a clear, definite commitment of resources.'' That change is not meant to imply that an

additional demonstration of a clear and definite commitment of resources, beyond the commitment to implement such measures as part of the proposed action, is required before the Services can take them into consideration. Rather, we intend the phrase ''do not require any additional demonstration of binding plans'' that is retained in § 402.14(g)(8) to reflect that demonstrations of resource commitments and other elements are not required before allowing the Services to take into account measures included in a proposed action to avoid, minimize, or offset adverse effects. Therefore, this final rule maintains the intent of the proposed revisions to § 402.14(g)(8).

The Services are also revising the proposed regulatory text at § 402.14(h) by adding a new paragraph (h)(1)(ii); redesignating the existing (h)(1)(ii) and (iii) as (h)(1)(iii) and (iv), respectively; and making a non-substantive edit at § 402.14(h)(4). New § 402.14(h)(1)(ii) clarifies that the biological opinion will also include a detailed discussion of the environmental baseline because a proper understanding of the environmental baseline is critical to our analysis of the effects of the action, as well as our determination as to whether a proposed action is likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Inclusion of a detailed description of the environmental baseline is consistent with existing practice (see Services' 1998 Consultation Handbook at pp. 4–13 and 4–15) and, therefore, this requirement will not change how the Services prepare biological opinions.

Section 402.16—Reinitiation of Consultation

We proposed two changes to this section. First, we proposed to remove the term ''formal'' from the title and text of this section to acknowledge that the requirement to reinitiate consultation applies to all section 7(a)(2) consultations. Second, we proposed to amend this section to address issues arising under the Ninth Circuit's decision in *Cottonwood Environmental Law Center* v. *U.S. Forest Service,* 789 F.3d 1075 (9th Cir. 2015), *cert. denied,* 137 S. Ct. 293 (2016), by making non-substantive redesignations and then revising § 402.16 by adding a new paragraph (b) to clarify that the duty to reinitiate does not apply to an existing programmatic land management plan prepared pursuant to the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1701 *et seq.,* or the National Forest Management Act (NFMA), 16 U.S.C. 1600 *et seq.,* when a new species is listed or new critical habitat is designated. In addition to seeking comment on the proposed revision to 50 CFR 402.16, we sought comment on whether to exempt other types of programmatic land or water management plans in addition to those prepared pursuant to FLPMA and NFMA, and on the proposed revision in light of the recently enacted Wildfire Suppression Funding and Forest Management Activities Act, H.R. 1625, Division O, which was included in the Omnibus Appropriations bill for fiscal year 2018 (''2018 Omnibus Act'').

In the proposed revisions to § 402.16, reinitiation of consultation would be required and would need to be requested by the Federal agency or by the Service. Moreover, an agency would not be required to reinitiate consultation after the approval of a land management plan prepared pursuant to 43 U.S.C. 1712 or 16 U.S.C. 1604 upon listing of a new species or designation of new critical habitat, provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation.

The Services received numerous comments related to our proposed amendments to this section. Comments were generally evenly divided in support of and in opposition to the proposed § 402.16(b), including whether we are precluded from expanding relief from reinitiation due to the 2018 Omnibus Act as well as to whether to extend the exemption to other types of plans. A summary of those comments and our responses are below at Summary of Comments and Recommendations.

In response to these comments and upon further consideration, we revised § 402.16, Reinitiation of consultation, to read as set out in the regulatory text at the end of this document.

We modified the language at § 402.16(a)(3) to correct the inadvertent failure of our proposed rule to reference the written concurrence process in this criterion for reinitiation of consultation. This criterion references the information and analysis the Services considered, including information submitted by the Federal agency and applicant, in the development of our biological opinion or written concurrence and not just the information contained within the biological opinion or written concurrence documents. The remaining three reinitiation criteria at § 402.16(a)(1), (2), and (4) were unchanged. We also took this opportunity to clarify the meaning of the reference to the Service in the current and adopted, final version of § 402.16(a) that reads, ''Reinitiation of consultation is required and shall be requested by the Federal agency or by the Service, . . .''. The reference to the Service in this language does not impose an affirmative obligation on the Service to reinitiate consultation if any of the criteria have been met. Rather, the reference here has always been interpreted by the Services to allow us to recommend reinitiation of consultation to the relevant Federal action agency if we have information that indicates reinitiation is warranted. It is ultimately the responsibility of the Federal action agency to reinitiate consultation with the relevant Service when warranted. The same holds true for initiation of consultation in the first instance. While the Services may recommend consultation, it is the Federal agency that must request initiation of consultation. See 50 CFR 402.14(a).

In addition, we clarified that initiation of consultation shall not be required for land management plans prepared pursuant to 43 U.S.C. 1712 or 16 U.S.C. 1604, upon listing of a new species or designation of new critical habitat, in certain specific circumstances, provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation. This exception to reinitiation of consultation shall not apply to those land management plans prepared pursuant to 16 U.S.C. 1604 if 15 years have passed since the date the agency adopted the land management plan and 5 years have passed since the enactment of Public Law 115–141 [March 23, 2018], or the date of the listing of a species or the designation of critical habitat, whichever is later.

The language at § 402.16(b) is revised from the proposed amendment to follow the time limitations imposed by Congress for the relief from reinitiation when a new species is listed or critical habitat designated for forest management plans prepared pursuant to NFMA. Because Congress did not address land management plans prepared pursuant to FLPMA in the 2018 Omnibus Act, the Services have determined that we may exempt any land management plan prepared pursuant to FLPMA from reinitiation when a new species is listed or critical habitat is designated as long as any action taken pursuant to the plan will be subject to its own section 7 consultation.

Section 402.17—Other Provisions

We proposed to add a new § 402.17 titled ''Other provisions.'' Within this new section, we proposed a new provision titled ''Activities that are reasonably certain to occur,'' in order to clarify the application of the ''reasonably certain to occur'' standard referenced in § 402.02 (defining effects of the action and cumulative effects). The proposed revisions are set out at 83 FR 35193, July 25, 2018.

The Services received numerous comments related to the proposed provision, many of which stated the Services should further clarify the language of the provision. In response to these comments and upon further consideration, we revised § 402.17 to read as set out in the regulatory text at the end of this document.

The revisions to the language in § 402.17 are intended to clarify several aspects of the process of determining whether an activity or consequence is ''reasonably certain to occur.''

First, we clarified that for a consequence or an activity to be considered reasonably certain to occur, the determination must be based on clear and substantial information. The term ''clear and substantial'' is used to describe the nature of information needed to determine that a consequence or activity is reasonably certain to occur. We do not intend to change the statutory requirement that determinations under the Act are made based on ''best scientific and commercial data available.'' By clear and substantial, we mean that there must be a firm basis to support a conclusion that a consequence of an action is reasonably certain to occur. This term is not intended to require a certain numerical amount of data; rather, it is simply to illustrate that the determination of a consequence to be reasonably certain to occur must be based on solid information. This added term also does not mean the nature of the information must support that a consequence is guaranteed to occur, but must have a degree of certitude.

To be clear, these regulations do not amend a Federal agency's obligation under the Act's section 7(a)(2); nor do they change the regulatory standard that action agencies must ''insure'' that their actions are not likely to jeopardize listed species or destroy or adversely modify critical habitat. See H.R. Conference Report 96–697 (1979) (confirming section 7(a)(2) requires all federal agencies to ensure that their actions are not likely to jeopardize endangered or threatened species or result in the adverse modification of critical habitat).

Second, in response to requests made in public comments for clarification of the factors to consider, we revised § 402.17(a)(1) and (2) to further elaborate what we meant in the original proposed versions of those factors. In particular, we revised § 402.17(a)(1) to describe that the Services would include past experience with ''activities that have resulted from actions that are similar in scope, nature, and magnitude to the proposed action'' when considering whether an activity might be reasonably certain to occur as a result of the proposed action under consultation. This is intended to capture the important knowledge developed by the action agencies and Services over their decades of consultation experience. We also made minor revisions to clarify § 402.17(a)(2). The proposed language used the phrase ''any existing relevant plans'' but did not reference to the activity itself. We recognize that this language may have been confusing and vague for readers and therefore have modified the text to clarify that we are referencing plans specific to that activity, not general plans that may contemplate a variety of activities or uses in an area.

Finally, we added a new paragraph to § 402.17 to emphasize other considerations that are important and relevant when reviewing whether a consequence is also reasonably certain to occur. These are not exhaustive, new, or more stringent factors than what we have used in the past to determine the likelihood of a consequence occurring nor are they meant to imply that time, distance, or multiple steps inherently make a consequence not reasonably certain to occur. See *Riverside Irrigation* v. *Andrews,* 758 F2d 508 (10th Cir. 1985) (upholding the U.S. Army Corps of Engineers' determination that it properly reviewed an effect downstream from the footprint of the action).

Each consultation will have its own set of evaluations and will depend on the underlying factors unique to that consultation. For example, a Federal agency is consulting on the permitting of installation of an outfall pipe. A secondary, connecting pipe owned by a third party is to be installed and would not occur ''but for'' the proposed outfall pipe, and existing plans for the connecting pipe make it reasonably certain to occur. Under our revised definition for effects of the action, any consequences to listed species or critical habitat caused by the secondary pipe would be considered to fall within the effects of the agency action. As the rule recognizes, however, there are situations, such as when consequences are so remote in time or location, or are only reached following a lengthy causal chain of events, that the consequences would not be considered reasonably certain to occur.

Summary of Comments and Recommendations

Section 402.02—Definitions

Definition of Destruction or Adverse Modification

We revised the definition of ''destruction or adverse modification'' by adding the phrase ''as a whole'' to the first sentence and removing the second sentence of the prior definition. The Act requires Federal agencies, in consultation with and with the assistance of the Secretaries, to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. In 1986, the Services established a definition for ''destruction or adverse modification'' (51 FR 19926, June 3, 1986, codified at 50 CFR 402.02) that was found to be invalid by the U.S. Court of Appeals for the Fifth (2001) and Ninth (2004) Circuits. In 2016, we revised the definition, in part in response to these court rulings (81 FR 7214; February 11, 2016).

In this final rule, we have further clarified the definition. The addition of the phrase ''as a whole'' to the first sentence reflects existing practice and the Services' longstanding interpretation that the final destruction or adverse modification determination is made at the scale of the entire critical habitat designation. The deletion of the second sentence removes language that is redundant and has caused confusion about the meaning of the regulation. These revisions are unchanged from the proposed rule, and further explanation of their background and rationale is provided in the preamble text of the proposed rule.

Comments on the Destruction and Adverse Modification Definition

Comment: Several commenters disagreed with defining ''destruction or adverse modification'' at all, saying that such a definition was unnecessary and that we should rely only on the statutory language. Others suggested creating separate definitions for ''destruction'' and ''adverse modification,'' and suggested that not doing so is an impermissible interpretation of the Act.

Response: The term ''destruction or adverse modification'' has been defined by regulation since 1978. We continue to believe it is appropriate and within

the Services' authority to define this term and believe that this revision to that definition will improve the clarity and consistency in the application of these concepts. Furthermore, the Services have discretion to issue a regulatory interpretation of the statutory phrase ''destruction or adverse modification'' and are not required to break such a phrase into separate definitions of its individual words. The Services believe that the inquiry is most usefully and appropriately defined by the general standard in our definition, and that ultimately the determination focuses on how the agency action affects the value of the critical habitat for the conservation of the species, regardless of whether the contemplated effects constitute ''destruction'' or ''adverse modification'' of critical habitat.

Comment: One commenter asserted that the definition should not include the phrase ''or indirect'' because it would allow for ''speculative actions to be used as determining factors.''

Response: The final rule does not alter the use of the phrase ''or indirect'' which has been in all prior versions of this definition. In addition, we note that the phrase has long been included in, and continues to be used in, the definitions of ''jeopardize the continued existence of'' and ''action area.'' We continue to believe its inclusion is appropriate in this context and takes into account that some actions may affect critical habitat indirectly. The Services use the best scientific and commercial data available and do not rely upon speculation in determining the effects of a proposed action or in section 7(a)(2) ''destruction or adverse modification'' determinations. The standards for determining effects of a proposed action are further discussed above under Definition of ''Effects of the Action''.

Comment: One commenter said that a lead agency should defer to cooperating agencies in evaluating potential impacts on critical habitat when the cooperating agencies have jurisdiction over the area being analyzed.

Response: The term ''cooperating agency'' arises in the NEPA context. Generally speaking, the lead agency under NEPA may also be a section 7 action agency under the Act. Cooperating agencies can be a valuable source of scientific and other information relevant to a consultation and may play a role in section 7 consultation. The Federal action agency, however, remains ultimately responsible for its action under section 7. Under 50 CFR 402.07, where there are multiple Federal agencies involved in a particular action, a lead agency may be designated to fulfill the consultation and conference responsibilities. The other Federal agencies can assist the lead Federal agency in gathering relevant information and analyzing effects. The determination of the appropriate lead agency can take into account factors including their relative expertise with respect to the environmental effects of the action.

Comment: Some commenters said that the revised definition creates uncertainty and potential lack of consistency regarding when formal or informal consultation is required, or that it revised the triggers for initiating consultation.

Response: The revisions to this definition should not create any additional uncertainty about when formal or informal consultation is required, because these revisions do not change the obligations of action agencies to consult or the circumstances in which consultation must be initiated.

Comment: Several commenters offered their own, alternative re-definitions of the phrase ''destruction or adverse modification.'' For example, one commenter suggested the phrase should be defined to mean ''a direct or indirect alteration caused by the proposed action that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.''

Response: We recognize that there could be more than one permissible, reasonable interpretation of this phrase. The definition we have adopted is an incremental change that incorporates longstanding approaches, modified from the 2016 definition (81 FR 7214; February 11, 2016) to improve clarity and consistency of application. Our adopted definition also has the value of being succinct. We do not view the proposed alternative definitions as improving upon clarity, and they may also contain unnecessary provisions or incorporate additional terminology that could itself be subject to multiple or inappropriate meanings.

Comment: Several commenters suggested that the definition should clarify that the only valid consideration in making a ''destruction or adverse modification'' determination is the impact of an action on the continued survival of the species, and that it should not take into consideration the ability of the species to recover. Conversely, some commenters said the definition improperly devalues or neglects recovery.

Response: Our definition focuses on the value of the affected habitat for ''conservation,'' a term that is defined by statute as implicating recovery (see 16 U.S.C. 1532(3)). ''Conservation'' is the appropriate focus because critical habitat designations are focused by statute on areas or features ''essential to the conservation of the species'' (16 U.S.C. 1532(5); see also 50 CFR 402.02 (defining ''recovery'')).

Comment: Several commenters said that the Services should do more to identify how they assess the value of critical habitat for the conservation of a species. They recommend measures such as identifying specific metrics of conservation value, providing guidance on the use of recovery or planning tools to identify targets for preservation or restoration, and defining de minimis thresholds or standardized project modifications that could be applied to recurring categories of projects in order to avoid triggering a ''destruction or adverse modification'' determination.

Response: As noted in the proposed rule preamble, the value of critical habitat for the conservation of a listed species is described primarily through the critical habitat designation itself. That designation itself will identify and describe, in occupied habitat, ''physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection'' (16 U.S.C. 1532(5)(A)(i)). Similarly, designations of any unoccupied habitat will describe the reasons that such areas have been determined to be ''essential for the conservation of the species'' (16 U.S.C. 1532(5)(A)(ii)). Critical habitat designations, recovery plans, and related information often provide additional and specific discussions regarding the role and quality of the physical or biological features and their distribution across the critical habitat in supporting the recovery of the listed species.

Regarding concepts such as defining metrics of value or pre-defined de minimis standards, the Services often assist action agencies in developing conservation measures during consultation that would work to reduce or minimize project impacts to critical habitat. The final rule contains provisions on programmatic consultations that could facilitate establishing and applying broadly applicable standards or guidelines based on recurring categories of actions whose effects can be understood and anticipated in advance. However, predefined metrics, standards, and thresholds for categories of action in many instances are not feasible, given variations in the actions, their circumstances and setting, and evolving scientific knowledge.

Comments on the Addition of the Phrase ''As a Whole''

Comment: Some comments supported the change, saying that the addition of this phrase was consistent with existing Services practice and guidance, or said the addition improved the definition and clarified the appropriate scale at which the ''destruction or adverse modification'' determination applies. Some commenters noted that the addition helps place the inquiry in its proper functional context and observed that alteration of critical habitat is not necessarily a per se adverse modification.

Response: We agree that the addition of ''as a whole'' helps clarify the application of the definition, without changing its meaning or altering current policy and practice.

Comment: One commenter said that the addition of ''as a whole'' could cause confusion as to whether it referred to the critical habitat or the species.

Response: The phrase ''as a whole'' is intended to apply to the critical habitat designation, not to the phrase ''a species.''

Comment: Some commenters asserted that adding ''as a whole'' to the definition meant that small losses would no longer be considered ''destruction or adverse modification'' because they would be viewed as small compared to the ''whole'' designation. Some of these comments asserted that under this definition, ''destruction or adverse modification'' would only be found if an action impacted the entire critical habitat designation or a large area of it. Some also noted that effects in small areas can have biological significance (*e.g.,* a migration corridor), and that impacts in a small area could be significant to a small, local population or important local habitat features.

Response: The addition of ''as a whole'' clarifies but does not change the Services' approach to assessing critical habitat impacts, as explained in the preamble to the proposed rule and in the 2016 final rule on destruction and adverse modification (81 FR 7214; February 11, 2016). In that 2016 rule, we elected not to add this phrase, but made clear that the phrase did describe and reflect the appropriate scale of ''destruction or adverse modification'' determinations. Consistent with longstanding practice and guidance, the Services must place impacts to critical habitat into the context of the overall designation to determine if the overall value of the critical habitat is likely to be appreciably reduced. The Services agree that it would not be appropriate to mask the significance of localized effects of the action by only considering the larger scale of the whole designation and not considering the significance of any effects that are occurring at smaller scales (see, *e.g., Gifford Pinchot,* 378 F.3d at 1075). The revision to the definition does not imply, require, or recommend discounting or ignoring the potential significance of more local impacts. Such local impacts could be significant, for instance, where a smaller affected area of the overall habitat is important in its ability to support the conservation of a species (*e.g.,* a primary breeding site). Thus, the size or proportion of the affected area is not determinative; impacts to a smaller area may in some cases result in a determination of destruction or adverse modification, while impacts to a large geographic area will not always result in such a finding.

Comment: Some comments expressed concern that the ''as a whole'' language, along with the preamble interpretation of ''appreciably diminish,'' undermined conservation because it would allow more piecemeal, incremental losses that over time would add up cumulatively to significant losses or fragmentation (referred to by many comments as ''death by a thousand cuts''). One commenter further expressed concern that such accumulated losses would add to the regulatory burden faced by private landowners with habitat on their lands. Some commenters asserted that the ''as a whole'' language would be difficult or burdensome to implement, because the Services lacked sufficient capacity to track or aggregate losses over time and space.

Response: As already noted, the revisions to the definition will not reduce or alter how the Services consider the aggregated effects of smaller changes to critical habitat. It should be emphasized that the revisions to this definition also do not alter or impose any additional burdens on action agencies or applicants to provide information on the nature of the proposed action or that action's effects on critical habitat or listed species. The regulations require the Services' biological opinion to assess the status of the critical habitat (including threats and trends), the environmental baseline of the action area, and cumulative effects. The Services' summary of the status of the affected species or critical habitat considers the historical and past impacts of activities across time and space. The effects of any particular action are thus evaluated in the context of this assessment, which incorporates the effects of all current and previous actions. This avoids situations where each individual action is viewed as causing only relatively minor adverse effects but, over time, the aggregated effects of these actions would erode the conservation value of the critical habitat.

In this final rule, we are also clarifying the text at § 402.14(g)(4) regarding status of the species and critical habitat to better articulate how the Services formulate their opinion as to whether an action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. This clarification will help ensure the ''incremental losses'' described by the commenters are appropriately considered in our jeopardy and destruction or adverse modification determinations.

The Services also make use of tracking mechanisms and tools to help track the effects of multiple agency actions. The Services have long recognized that tracking the effects of successive activities and projects is a significant challenge and continue to prioritize improvement of the methods for doing so. We also note that the use of programmatic consultations, as addressed elsewhere in this rule, can help with this challenge by encouraging consultation at a broad scale across geographic regions and programs encompassing multiple activities and actions. Finally, in response to concerns that this change would impose additional burdens on private landowners, the Services remind the public that critical habitat designation creates no responsibilities for the landowner unless the landowner proposes an activity that includes Federal funding or authorization of a type that triggers consultation. Otherwise, the designation of critical habitat requires no changes to the landowner's use or management of their land.

Comment: Some commenters said that adding the phrase ''as a whole'' would make application of the definition more subjective and less consistent.

Response: The comment appears to be motivated by the belief that any adverse effect to critical habitat should be considered, per se, ''destruction or adverse modification,'' and that the change introduces a new element of subjectivity. We do not agree. As with under the prior definition, the Services are always required to exercise judgment and apply scientific expertise when making the ultimate determination as to whether adverse effects rise to the level of ''destruction or adverse modification.''

Comment: Some commenters said that this change would impermissibly render the definition of ''destruction or adverse modification'' too similar or the same as the definition of ''jeopardize the continued existence of,'' while the statute intends them to have different meanings. Some also said that this addition conflicted with case law stating that the two phrases have distinct meanings.

Response: The Services do not agree that the addition of ''as a whole'' leads to improper conflation of the meanings of ''jeopardize the continued existence of'' and ''destruction or adverse modification.'' The terms ''destruction or adverse modification'' and ''jeopardize the continued existence of'' have long been recognized to have distinct meanings yet implicate overlapping considerations in their application. See, *e.g., Sierra Club* v. *U.S. Fish & Wildlife Service,* 245 F.3d 434, 441 (5th Cir. 2001); *Greenpeace* v. *National Marine Fisheries Serv.,* 55 F.Supp.2d 1248, 1265 (W.D. Wash.1999); *Conservation Council for Hawai'i* v. *Babbitt,* 2 F.Supp.2d 1280, 1287 (D. Haw. 1998). The phrase ''jeopardize the continued existence of'' focuses directly on the species' survival and recovery, while the definition of ''destruction or adverse modification'' is focused first on the critical habitat itself, and then considers how alteration of that habitat affects the ''conservation'' value of critical habitat. Thus, the terms ''jeopardize the continued existence of'' and ''destruction or adverse modification'' involve overlapping but distinct considerations. See *Sierra Club* v. *U.S. Fish & Wildlife Serv.,* 245 F.3d 434, 441 (5th Cir. 2001) (noting that the critical habitat analysis is more directly focused on the effects on the designated habitat and has a ''more attenuated'' relationship to the survival and recovery of the species than the ''jeopardize'' analysis).

Comment: Several commenters provided arguments or recommendations regarding the geographic scale at which ''destruction or adverse modification'' determinations should focus and asserted that the ''as a whole'' was not necessarily the right scale. One commenter said the appropriate scale was the critical habitat unit or larger, especially for wide-ranging species. Some commenters said that the ''as a whole'' language was inappropriate because the appropriate geographic scale for assessing ''destruction or adverse modification'' was a scientific question. Similarly, one comment asserted the Services must use a ''biologically meaningful'' scale. A group of State governors questioned how scale would be treated when there was a portion of critical habitat in one State that was geographically unconnected to critical habitat in other States.

Response: The use of the phrase ''as a whole'' is not solely meant to establish a geographic scale for ''destruction or adverse modification'' determinations. The phrase applies to assessing the value of the whole designation for conservation of the species. Effects at a smaller scale that could be significant to the value of the critical habitat designation will be considered. As the preamble to the proposed rule notes, ''the Services must [then] place those impacts in context of the designation to determine if the overall value of the critical habitat is likely to be reduced'' (83 FR 35178, July 25, 2018, p. 83 FR 35180). Thus, while the destruction or adverse modification analysis will consider the nature and significance of effects that occur at a smaller scale than the whole designation, the ultimate determination applies to the value of the critical habitat designation as a whole.

Comment: One commenter said that the addition of ''as a whole'' was inconsistent with the following language in the 1998 Consultation Handbook: ''The consultation or conference focuses on the entire critical habitat area designated unless the critical habitat rule identifies another basis for analysis, such as discrete units and/or groups of units necessary for different life cycle phases, units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements.'' See 1998 Consultation Handbook at p. 4–42.

Response: The revised definition is not inconsistent with the quoted 1998 Consultation Handbook guidance. As we stated in our preamble to the proposed rule, under the revised definition, ''if a particular project would cause adverse effects to a portion of critical habitat, the Services must place those impacts in context of the designation to determine if the overall value of the critical habitat is likely to be reduced. This could occur where, for example, a smaller affected area of habitat is particularly important in its ability to support the conservation of a species (*e.g.,* a primary breeding site). Thus, the size or proportion of the affected area is not determinative; impacts to a smaller area may in some cases result in a determination of destruction or adverse modification, while impacts to a large geographic area will not always result in such a finding'' (83 FR 35178, July 25, 2018, p. 83 FR 35180). In other words, it may be appropriate to focus on a unit of analysis that is smaller than the entire designation, but it would not be appropriate to conclude the analysis without relating the result of the alterations at that scale back to the listed entity, which is the designation ''as a whole,'' in order to assess whether the value of that designation to the conservation of a listed species is appreciably diminished.

Comment: Some commenters disagreed with the addition of ''as a whole'' because they said it conflicted with the plain language of the statute. In particular, some asserted that, by statute, critical habitat is ''essential to the conservation of the species.'' They reason that, accordingly, any adverse effect is therefore per se ''destruction or adverse modification'' since it is the loss or reduction of something that is ''essential.'' Some of these commenters also focused similar criticism on the preamble discussion of the phrase ''appreciably diminish,'' as discussed further below.

Response: The Services do not agree that any adverse effect to critical habitat is per se ''destruction or adverse modification,'' a subject further discussed in the discussion of ''appreciably diminish'' in the preamble to the proposed rule and the discussion of comments on that preamble provided below. Nor do the Services agree that the use of the term ''essential to the conservation of the species'' in the Act's definition of critical habitat requires such an interpretation. The phrase ''essential to the conservation of the species'' guides which areas will be designated but does not require that every alteration of the designated critical habitat is prohibited by the statute. Just as the determination of jeopardy under section 7(a)(2) of the Act is made at the scale of the entire listed entity, a determination of destruction or adverse modification must ultimately consider the diminishment to the value for conservation at the scale of the entire critical habitat designation. As the 1998 Consultation Handbook states, adverse effects on elements or segments of critical habitat ''generally do not result in jeopardy or adverse modification determinations unless that loss, when added to the environmental baseline, is likely to result in significant adverse effects throughout the species' range, or appreciably diminish the ability of the critical habitat to satisfy essential requirements of the species.'' See 1998 Consultation Handbook at p. 4–36. Accordingly, the Ninth Circuit Court of Appeals has held that ''a determination that critical habitat would be destroyed was thus not inconsistent with [a]

finding of no 'adverse modification.' '' See also *Butte Envir. Council* v. *U.S. Army Corps of Eng'rs,* 620 F.3d 936, 947–48 (9th Cir. 2010).

Deletion of the Second Sentence

Comment: Some commenters claimed that removal of the sentence was unnecessary, and that doing so would eliminate important guidance embedded in the definition for appropriate factors to consider in the destruction or adverse modification analysis. Some suggested removing the provision about ''preclusion or delay'' of features, while keeping the remainder. One commenter suggested keeping the second sentence and expanding it to include additional language about cumulative loss of habitat required for recruitment. However, other commenters agreed with removing the second sentence, saying it was duplicative of the content of the first sentence, was vague and confusing, or that it contained provisions that overstepped the Services' authority. One commenter stated that removal of the second sentence will help place the focus on whether or not a project would ''appreciably diminish'' the value of critical habitat as a whole for the conservation of the species.

Response: This revision was made because the second sentence of the definition adopted in the 2016 final rule (81 FR 7214; February 11, 2016) has caused controversy among the public and many stakeholders. The revised definition streamlines and simplifies the definition. We agree with the commenters who stated that the second sentence was unnecessary—it had attempted to elaborate upon meanings that are already included within the first sentence. We also agree with the commenters who said that removing the second sentence will appropriately focus attention on the operative first sentence, which states that in all cases, the analysis of destruction or adverse modification must address whether the proposed action will result in an ''alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.''

Comment: Some commenters were concerned that removal of the second sentence meant that the Services were stating that a destruction or adverse modification determination must always focus only on existing features, or that the Services intended to downplay the fact that some designated habitat may be governed by dynamic natural processes or be degraded and in need of improvement or restoration to recover a species. Such commenters also pointed out that species' habitat use and distribution can also be dynamic and change over time. Some commenters similarly asserted that this change improperly downgraded the importance of unoccupied critical habitat for recovery or asserted that the revision showed the Services were lessening their commitment to habitat improvement and recovery efforts.

Response: As already noted, the deletion of the second sentence was meant to clarify and simplify the definition, but not to change the Services' current practice and interpretation regarding the applicability of the definition. Nor does the change mean that the recovery role of unoccupied critical habitat will not be considered in destruction or adverse modification determinations. As noted in the preamble to the proposed rule, the intended purpose of the language about precluding or delaying ''development of such features'' was to acknowledge ''that some important physical or biological features may not be present or are present in a sub-optimal quantity or quality. This could occur where, for example, the habitat has been degraded by human activity or is part of an ecosystem adapted to a particular natural disturbance (*e.g.,* fire or flooding), which does not constantly occur but is likely to recur.'' See also 79 FR 27060, May 12, 2014, p. 27061. Nor do the revisions mean that the Services are lessening their commitment to programs and efforts designed to bring about improvements to critical habitat.

Comment: In contrast to commenters who opposed removing the second sentence, some commenters favored the removal of the second sentence because it would remove the phrase ''preclude or significantly delay development of such features.'' Some asserted this phrase was confusing or could lead to inconsistent or speculative application of the definition; others said that this phrase overstepped the Services' statutory authority and that ''destruction or adverse modification'' had to focus on existing features and could not be based on the conclusion that an action would ''preclude or significantly delay'' the development of such features. Some of these commenters also disputed language in the preamble of the proposed rule that they said indicated that the Services would improperly consider potential changes to critical habitat in making ''destruction or adverse modification'' determinations, rather than focusing solely on existing features.

Response: The Services agree that the second sentence was unnecessary and that its removal will simplify and clarify the definition. The Services agree that it is important in any destruction or adverse modification assessment to focus on adverse effects to features that are currently present in the habitat, particularly where those features were the basis for its designation. However, as noted in the preamble to the proposed rule, there may also be circumstances where, within some areas of designated critical habitat at the time of consultation, ''some important physical or biological features may not be present or are present in a sub-optimal quantity or quality. This could occur when, for example, the habitat has been degraded by human activity or is part of an ecosystem adapted to a particular natural disturbance (*e.g.,* fire or flooding), which does not constantly occur but is likely to recur'' (79 FR 27060, May 12, 2014, p. 27061). The extent to which the proposed action is anticipated to impact the development of such features is a relevant consideration for the Services' critical habitat analysis. The Services reaffirm their longstanding practice that any destruction or adverse modification determination must be grounded in the best scientific and commercial data available and should not be based upon speculation.

Appreciably Diminish

In order to further clarify application of the definition of ''destruction or adverse modification,'' the preamble to the proposed rule discussed the term ''appreciably diminish.'' The proposed rule did not contain any revisions to regulatory text defining this phrase or changing how it is used in the regulations. The preamble discussion was thus not intended to provide a new or changed interpretation of the Act's requirements, but instead was intended to help clarify how the Services apply the term ''appreciably diminish'' and to discuss some alternative interpretations that the Services do not believe correctly reflect the requirements of the statute or the Services' regulations. Below is discussion of comments received on this proposed rule preamble discussion of ''appreciably diminish,'' as well as related comments on the preamble discussion of associated topics of ''baseline jeopardy'' and ''tipping point.''

Comment: A number of commenters expressed agreement with this section of the preamble, and the Services' interpretation that not every adverse effect to critical habitat constitutes ''destruction or adverse modification'' (and relatedly, that not every adverse effect to a species ''jeopardizes the continued existence of'' a listed species). Some commenters noted that this interpretation comports with case

law holding that a finding of adverse effects on critical habitat do not automatically require a determination of ''destruction or adverse modification,'' such as *Butte Env. Council,* 620 F.3d 936, 948 (9th Cir. 2010).

Response: We appreciate that these commenters found this preamble discussion helpful.

Comment: Some commenters criticized the preamble language as creating too broad of a standard. Those commenters asserted that the preamble language implied that any effect, as long as it could be measured, could trigger an adverse modification opinion. For example, one commenter asserted that the Services were lowering the standard so that ''any measurable or recognizable effect'' on critical habitat would be considered destruction or adverse modification.

Response: It was not our intention to imply, or state in any manner, that any effect on critical habitat that can be measured would amount to adverse modification of critical habitat. To the contrary, our experience with consultations has demonstrated that the vast majority of consultations that involved an action with adverse effects do not amount to a determination of adverse modification of critical habitat.

We believe some of the confusion expressed by these comments can be alleviated by providing more explanation of where in the consultation process the ''appreciably diminish'' concept comes into play. The consultation process sets up a multiple-stage evaluation process of effects to critical habitat. The first inquiry—even before consultation begins—is whether any effect of an action ''may affect'' critical habitat. In order to determine if there is an effect, of course, it would have to be something that can be described or detected. The second consideration, then, would be whether that effect has an adverse effect on the critical habitat within the action area. To make that determination, the effect would need to be capable of being evaluated, in addition to being detected or described (see 1998 Consultation Handbook at pp. 3–12–3–13 (noting that ''insignificant'' effects will not even trigger formal consultation, and that at this step, the evaluation is made of whether a person would ''be able to meaningfully measure, detect, or evaluate'' the effects)). The finding that an effect is adverse at the action-area scale does not mean that it has met the section 7(a)(2) threshold of ''destruction or adverse modification''; rather, that is a determination that simply informs whether formal consultation is required at all. Therefore, an adverse effect is not, by definition, the equivalent of ''destruction or adverse modification,'' and further examination of the effect is necessary. As noted above, courts have also endorsed this view; see, *e.g., Butte Envtl. Council* v. *U.S. Army Corps of Eng'rs,* 620 F.3d 936, 947–48 (9th Cir. 2010) (holding that ''a determination that critical habitat would be destroyed was thus not inconsistent with [a] finding of no 'adverse modification' '').

After effects are determined to be adverse at the action-area scale, they are analyzed with regard to the critical habitat as a whole. That is, the Services look at the adverse effects and evaluate their impacts when added to the environmental baseline and cumulative effects on the value of the critical habitat for the conservation of the species, taking into account the total and full extent as described in the designation, not just in the action area. It is at this point that the Services look to whether the effects diminish the role of the entire critical habitat designation. As discussed further above in our discussion of the phrase ''as a whole,'' the Services must place impacts to critical habitat into the context of the overall designation to determine if the overall value of the critical habitat is likely to be reduced.

Even if it is determined that the effects appear likely to diminish the value of the critical habitat, a determination of ''destruction or adverse modification'' requires more than adverse effects that can be measured and described. At this stage in the consultation's multi-staged evaluations, the Services will need to evaluate the adverse effects to determine if the adverse effects when added to the environmental baseline and cumulative effects will diminish the conservation value of the critical habitat in such a considerable way that the overall value of the entire critical habitat designation to the conservation of the species is appreciably diminished. It is only when adverse effects from a proposed action rise to this considerable level that the ultimate conclusion of ''destruction or adverse modification'' of critical habitat can be reached.

Comment: Several commenters suggest that in addition to defining ''destruction or adverse modification,'' the Services should adopt a new regulatory definition of ''appreciably diminish.'' For example, one comment suggests the definition should read ''means to cause a reasonably certain reduction or diminishment, beyond baseline conditions, that constitutes a considerable or material reduction in the likelihood of survival and recovery.''

Response: The Services believe our revised definition of ''destruction or adverse modification'' will be clearer than before, while retaining continuity by keeping important language from prior versions of the definition. We do not think the various proposed definitions for ''appreciably diminish'' would improve upon the ''destruction or adverse modification'' definition, and we conclude they would themselves introduce additional undefined, ambiguous terminology that would not likely improve the clarity of the definition or the consistency of its application.

Comment: Some commenters suggest the Services state in rule text or preamble that ''appreciably diminish'' should be defined as it was in the 1998 Consultation Handbook: ''to considerably reduce the capability of designated or proposed critical habitat to satisfy requirements essential to both the survival and recovery of a listed species.'' Some commenters further assert that the Services should disavow language in the 2016 final rule preamble (81 FR 7214; February 11, 2016) to the effect that ''considerably'' means ''worthy of consideration'' and that it applies where the Services ''can recognize or grasp the quality, significance, magnitude, or worth of the reduction in the value of'' critical habitat. They assert this language is too broad and gives the Services too much discretion or will cause the Services to find ''destruction or adverse modification'' in inappropriate circumstances. One commenter notes that some courts have affirmed the 1998 Consultation Handbook definition and held the term ''appreciably'' means ''considerable'' or ''material.'' See, *e.g., Pac. Coast Feds. of Fishermen's Assn's* v. *Gutierrez,* 606 F. Supp. 2d 1195, 1209 (E.D. Cal. 2008); *Forest Guardians* v. *Veneman,* 392 F. Supp. 2d 1082, 1092 (D. Ariz. 2005).

Response: We believe the interpretation provided in our proposed rule preamble and as described above in detail is consistent with the guidance provided in the 1998 Consultation Handbook and the language used in the 2016 final rule (81 FR 7214; February 11, 2016). The preamble language in the draft rule did not seek to raise or lower the bar for making a finding of destruction or adverse modification. As with the 2016 definition and prior practice on the part of the Services, and as discussed above, destruction or adverse modification is more than a noticeable or measurable change. As we have detailed above, in order to trigger adverse modification, there must be an alteration that appreciably diminishes

the value of critical habitat as a whole for the conservation of a listed species.

Comment: Some comments sought for the Services to develop a more exact or quantifiable method of determining destruction or adverse modification. One commenter requested that the Services develop regulations setting forth quantifiable ''statistical tools appropriate for the attribute of interest'' to guide such determinations, based on ''defensible science that leads to reliable knowledge in quantifying the impacts of proposed or extant alterations related to habitat or populations of listed species.''

Response: Where appropriate, the Services use statistical and quantifiable methods to support determinations of ''destruction or adverse modification'' under the ''appreciably diminish'' standard, but the best scientific and commercial data available often does not support this degree of precision. As such, the Services are required to apply the statute and regulations, and reach a conclusion even where such data and methods are not available.

Comment: Some commenters asserted that the preamble discussion of ''appreciably diminish'' stated an interpretation that was inconsistent with the statute, insufficiently protective of critical habitat, and would make the bar too high for making findings of ''destruction or adverse modification.'' Many of these comments linked the ''appreciably diminish'' language in the preamble with the ''as a whole'' change to the first sentence of the definition and concluded that these operated together to raise the tolerance for incremental and cumulative losses that would over time degrade critical habitat and undermine conservation. Thus, some of these comments are also addressed above in the discussion of ''as a whole.'' These comments often also raise issues about the concepts of ''tipping point'' and ''baseline jeopardy'' addressed further below.

Response: Our preamble discussion does not raise or lower the bar for finding ''destruction or adverse modification.'' The Services believe that this discussion of ''appreciably diminish'' comports with prior guidance and with the statute.

Baseline Jeopardy and Tipping Point

As discussed in our proposed rule's preamble, the definitions of ''destruction or adverse modification'' and ''jeopardize the continued existence of'' both use the term ''appreciably,'' and the analysis must always consider whether impacts are ''appreciable,'' even where critical habitat or a species already faces severe threats prior to the action. We thus noted that the statute and regulations do not contain any provisions under which a species should be found to be already (pre-action) in an existing status of being ''in jeopardy'' ''in peril,'' or ''jeopardized'' by baseline conditions, such that any additional adverse impacts must be found to meet the regulatory standards for ''jeopardize the continued existence of'' or ''destruction or adverse modification.'' As we explained, the terms ''jeopardize the continued existence of'' and ''destruction or adverse modification'' are, in the plain language of section 7(a)(2), determinations that are made about the effects of Federal actions. They are not determinations made about the environmental baseline for the proposed action or about the pre-action condition of the species.

The proposed rule's preamble also explains the Services' view that, contrary to the implications of some court opinions and commenters, they are not, in making section 7(a)(2) determinations, required to identify a ''tipping point'' beyond which the species cannot recover from any additional adverse effect. Neither the Act nor our regulations state any requirement for the Services to identify a ''tipping point'' or recovery benchmark for making section 7(a)(2) determinations. Section 7(a)(2) provides the Services with discretion as to how it will determine whether the statutory prohibition on jeopardy or destruction or adverse modification is exceeded. We also noted that the state of science often does not allow the Services to identify a ''tipping point'' for many species.

Comment: Some commenters stated opposition to the Services' interpretation and said it would undermine conservation. In particular, many commenters asserted that some species are so imperiled or rare that they are in fact in a state of ''baseline jeopardy'' and cannot sustain any additional adverse effects. Such species, they asserted, should be considered to be in a state of ''baseline jeopardy'' or ''baseline peril.''

Response: The Services do not dispute that some listed species are more imperiled than others, and that for some very rare or very imperiled species, the amount of adverse effects to critical habitat or to the species itself that can occur without triggering a ''jeopardize'' or ''destruction or adverse modification'' determination may be small. However, the statute and regulations do not contain the phrase ''baseline jeopardy.'' Nor does the statute or its regulations recognize any state or status of ''baseline jeopardy.'' While the term ''jeopardy'' is sometimes used as a shorthand, the statutory language is ''jeopardize the continued existence,'' and it applies prospectively to the effects of Federal actions, not to the pre-action status of the species. As we stated in our proposed rule preamble, ''[t]he terms 'jeopardize the continued existence of' and 'destruction or adverse modification' are, in the plain language of section 7(a)(2), determinations that are made about the effects of Federal agency actions. They are not determinations made about the environmental baseline or about the pre-action condition of the species. Under the [Act], a listed species will have the status of 'threatened' or 'endangered,' and all threatened and endangered species by definition face threats to their continued existence'' (83 FR 35178, July 25, 2018, p. 83 FR at 35182). For the ''jeopardize'' determinations, as with the ''destruction or adverse modification'' determinations, a determination that there are likely to be adverse effects of a Federal action is the starting point of formal consultation. The Services are then obliged to consider the magnitude and significance of the effects they cause, when added to the environmental baseline and cumulative effects, and the status of the species or critical habitat, before making our section 7(a)(2) determination.

Comment: Some commenters asserted that it is not possible to rationally analyze whether an action jeopardizes a species without identifying a ''tipping point.''

Response: Different commenters, as well as prior court opinions, have offered varying interpretations of what the term ''tipping point'' means. For example, one commenter on the proposed rule says that ''[t]ipping points for species are when the environment degrades itself to where the population growth is too low to support a viable population.'' The Ninth Circuit Court of Appeals has described the concept as ''a tipping point beyond which the species cannot recover.'' See *Oceana, Inc.* v. *Nat'l Marine Fisheries Serv.,* 705 F. App'x 577, 580 (9th Cir. 2017); see also *Wild Fish Conservancy* v. *Salazar,* 628 F.3d 513, 527 (9th Cir. 2010) (referring to a ''tipping point precluding recovery''). Another Ninth Circuit case described the issue as one of determining ''at what point survival and recovery will be placed at risk'' (*Nat'l Wildlife Fed'n* v. *Nat'l Marine Fisheries Serv.,* 524 F.3d 917, 936 (9th Cir. 2008)), in order to avoid ''tipping a listed species too far into danger.'' *Id.* We disagree that a rational analysis of whether an action is likely to jeopardize a species necessarily requires identification of such a ''tipping point.''

The state of the science regarding the trends and population dynamics of a species may often not be robust enough to establish such tipping points with sufficient certainty or confidence, and the Services have successfully increased the abundance of some species from a very small population size (*e.g.,* California condor). In addition, there are myriad variables that affect species viability, and it would not likely be the case that one could reduce the inquiry to a single ''tipping point.'' For example, species viability may be closely tied to abundance, reproductive rate or success, genetic diversity, immunity, food availability or food web changes, competition, habitat quality or quantity, mate availability, etc. In those cases, the attempt to define a tipping point could undermine the rationality of the determination, bind the Services to base their judgment on overly rigid criteria that give a misleading sense of exactitude, and unduly limit the ability to exercise best professional judgment and factor in the actual scientific uncertainties. The Services do not dispute that, in some cases, there could be a species that is so rare or imperiled that it reaches a point where there is little if any room left for it to tolerate additional adverse effects without being jeopardized by the action. But even in those cases, the Services would apply the necessary ''reduce appreciably'' standard to the ''jeopardize'' determination. The Services' final determination should be judged according to whether it reasonably applied the governing statutory and regulatory standards and used the best scientific and commercial data available. There is no de facto or automatic requirement that a reasonable conclusion must include an artificial requirement, ungrounded in the statute, to identify a ''tipping point.''

Comment: Some commenters asserted that the preamble, particularly with respect to ''tipping point'' and ''baseline jeopardy,'' was inconsistent with the interpretation stated in a 1981 ''Solicitor's opinion'' referenced as Appendix D to the 1998 Consultation Handbook. The commenters call attention to a statement in that memorandum describing how, when a succession of Federal actions may affect a species, ''the authorization of Federal projects may proceed until it is determined that further actions are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat.'' That memo further states that ''[i]t is this 'cushion' of natural resources which is available for allocation to [Federal] projects until the utilization is such that any future use may be likely to jeopardize a listed species or adversely modify or destroy its critical habitat. At this point, any additional Federal activity in the area requiring a further consumption of resources would be precluded under section 7.'' Commenters assert that this language recognizes the existence of ''baseline jeopardy'' and/or recognizes that the Services must utilize the tipping point concept in performing a section 7(a)(2) analysis.

Response: The subject matter of the referenced memorandum was the treatment of cumulative effects. In any case, the guidance provided in that memorandum is not in conflict with the preamble discussion provided in the proposed rule on ''appreciably diminish,'' ''tipping point,'' and ''baseline jeopardy,'' or in conflict with the Services' long-standing interpretations stated in the recent proposed rule's preamble. The position of the Services is that there is nothing in the Act or its regulations, or necessitated under the standards of the Administrative Procedure Act, requiring that a section 7(a)(2) analysis quantify or identify a ''tipping point.''

Definition of Director

Comment: Some commenters agreed with the proposed revised definition. One commenter expressed concern that revising the definition would require consultations to be finalized at the Services' Headquarters offices and result in delays. Another commenter suggested the definition make clear that any ''authorized representative'' of the Director meet the respective eligibility requirements for political appointment to the position of Assistant Administrator for Fisheries for NMFS and Director of FWS.

Response: While we understand the commenter's observation regarding occasional lapses in Senate-confirmed agency leadership, we are unaware of any actual issues related to either the existing or revised definition; therefore, we decline to make any additional changes. As stated in the proposed rule, the purpose of revising the definition is to clarify and simplify it, in accordance with the Act and the Services' current practice. The revised definition designates the head of both FWS and NMFS as the definitional Director under the Act section 7 interagency cooperation regulations. The change does not revise the current signature delegations of the Services in place that allow for signature of specified section 7 documents (*e.g.,* biological opinions and concurrence letters) at the regional and field levels and will not increase the completion time for consultation.

Definition of Effects of the Action

The Services proposed to revise the definition of ''effects of the action'' in a manner that simplified the definition by collapsing the terms ''direct, ''indirect,'' interrelated,'' and ''interdependent'' and by applying a two-part test of ''but for'' and ''reasonably certain to occur.'' Related to this revised definition, we also proposed to make the definition of environmental baseline a stand-alone definition within § 402.02 and moved the instruction that the effects of the proposed action shall be added to the environmental baseline into the regulations guiding the Services' responsibilities in formal consultation in § 402.14(g). In addition, we proposed to add a new § 402.17 titled ''Other provisions'' and, within that new section, add a new provision titled ''Activities that are reasonably certain to occur'' in order to clarify the application of the ''reasonably certain to occur'' standard referenced in two specific contexts: activities caused by but not included as part of the proposed action, and activities under ''cumulative effects.'' As discussed above under Discussion of Changes from Proposed Rule, the Services received numerous comments on the proposed definition of ''effects of the action'' and the new provision at § 402.17(a) ''Activities that are reasonably certain to occur.'' We have adopted a final, revised definition of ''effects of the action'' and revised text at § 402.17(a) in response to those comments. Below, we summarize other comments received on the scope of the ''effects of the action'' and the proposed two-part test for effects of the action of ''but for'' and ''reasonably certain to occur'' and present our responses. We address changes to the environmental baseline definition in a separate discussion below.

Scope of Effects of the Action

Comment: Some commenters were concerned that removal of the terms ''direct,'' ''indirect,'' ''interrelated,'' and ''interdependent'' would hamper discussions because those terms could no longer be used.

Response: The terms are not prohibited from use in discussion, as they can be useful when discussing the mode or pathway of the effects of an action or activity. However, as discussed above, elimination of these terms simplifies the definition of ''effects of the action'' and causes fewer concerns about parsing what label applies to each consequence. Now consequences caused by the proposed

action encompass all effects of the proposed action, including effects from what used to be referred to as ''direct'' and ''indirect'' effects and ''interrelated'' or ''interdependent'' activities.

Comment: A commenter questioned the ability of the proposed two-part test to capture the risks of low probability but high consequence impacts such as an oil spill and welcomed an explanation of this scenario.

Response: As discussed throughout this rule and in the proposed rule, the Service's overall approach to ''effects of the action'' has been retained. During consultation, the consequences of the Federal agency action are reviewed in light of specific facts and circumstances related to the proposed action. If appropriate, those effects are then considered in the effects of the action analysis. Therefore, the Services expect that scenarios such as that mentioned by the commenter will be subject to review just as they have been in current consultation practice.

Comment: One commenter believed that it is critical to clarify that consultation is focused on the actual effects of the agency action on listed species and designated critical habitat, and that those effects are to be differentiated from the environmental baseline. They recommended adding ''[e]ffects of the action shall be clearly differentiated from the environmental baseline'' to the definition of ''effects of the action.''

Response: The Services decline to make the suggested addition to the definition of ''effects of the action.'' In the proposed rule, the Services made clear that the ''environmental baseline'' is a separate consideration from the effects of the proposed Federal action by both proposing to separate the definition of the term into a standalone definition and by clarifying the instruction to add the effects of the action to the environmental baseline as part of amendments to the language at § 402.14(g). As discussed above, the Services also have added an additional sentence to the definition of environmental baseline to help further clarify when the consequences of certain ongoing agency facilities and activities fall within the environmental baseline and would therefore not be considered in ''effects of the action.''

Comment: A few commenters requested that if the distinction between non-Federal ''activities'' and ''effects'' is maintained, the background to the final rule should more clearly explain the purpose and meaning of the distinction, and that the Services should clarify that discretionary Federal actions currently characterized as ''interrelated and interdependent'' remain subject to the consultation requirement.

Response: The Services are adopting a revised definition of effects of the action, as described above. The distinction between activities and effects (now ''consequences'') in this definition is intended to capture two aspects of the analysis of the ''effects of the action.'' First, a proposed Federal action may cause other associated or connected actions, which are referred to as other activities caused by the proposed action in the definition to differentiate them from the proposed Federal ''action.'' These activities would have been called ''interrelated'' or ''interdependent'' actions or ''indirect effects'' under the prior definition codified at § 402.02. In large part due to the three possible categories these activities could have fallen into, and the debates that regularly ensued while attempting to categorize them, we chose to collapse those three possible categories and ''direct effects'' into ''all consequences'' caused by the proposed action. Second, both the proposed action and the other activities caused by the proposed action may have physical, chemical, or biotic consequences on the listed species and critical habitat. Both the proposed action and other activities caused by the proposed action must be investigated to determine the physical, chemical, and biotic consequences. In the case of an activity that is caused by (but not part of) the proposed action, the two-part test must be examined twice—once for the activity and then again for the consequences of that activity. Additionally, if Federal activities caused by the Federal agency action under consultation are identified, those additional activities should be ''combined in the consultation and a lead agency . . . determined for the overall consultation'' (1998 Consultation Handbook at p. 4–28).

Comment: One commenter argued that, by eliminating the language directing the Services to consider direct and indirect effects together with interrelated or interdependent actions, the Services have revised the language to account only for direct effects. They argue that this proposed revision is inconsistent with the intent of the Act and its scientific underpinnings, as it ignores the fact that many imperiled species face multiple threats that compound one another.

Response: The proposed definition of ''effects of the action'' neither ignored the multiple threats facing listed species and critical habitats nor did it reduce all effects analysis only to the consideration of direct effects. The Services have adopted a revised, final definition of ''effects of the action'' that clarifies that all of the consequences of a proposed action must be evaluated, and that the causation tests are applied to all effects of the proposed action. Contrary to the commenter's assertion, a complete assessment of the ''effects of the action'' would require, where appropriate, the consideration of multiple stressors and consequences resulting from any synergistic, or compounding factors. These consequences would then be added to the environmental baseline and cumulative effects per the provisions now found at § 402.14(g)(4).

Comment: One commenter suggested the final regulations explicitly recognize an obligation to consider ''spillover effects'': ''In some contexts, efforts to modify or condition an action in order to reduce the impacts of the activity may result in 'spillover effects' that, ultimately, result in more adverse impacts to the species. A 'spillover effect' is the unintended consequence that occurs when an action in one market results in a corollary effect in another market. For example, a closure of the Hawaii-based shallow-set longline fishery in the early 2000s was demonstrated to result in thousands of additional sea turtle interactions due to the replacement of market share by foreign fisheries that do not implement the same protected species measures as the U.S. fishery and consequently interact with many more turtles.''

Response: The purpose and obligation of section 7(a)(2) of the Act is that Federal agencies are required to insure their proposed actions are not likely to jeopardize listed species or destroy or adversely modify critical habitat. This obligation is directed solely at the Federal action and may not be abrogated because of the potential response of other agencies or entities engaged in the same or similar actions. In the case of proposed Federal actions, the consequences of the proposed action, such as the incidental capture of sea turtles in Hawaii-based longline fishing gear from the commenter's example, must be evaluated. Other consequences could possibly include such ''spillover effects'' if they meet the ''but for'' and ''reasonably certain to occur'' causation tests applied to consequences caused by the proposed action under the revised, final definition of effects of the action, but this would have to be determined on a case-by-case basis. Further, the effects of other actions such as those described in the example may already be included in the overall jeopardy analysis as part of the status of the species, environmental baseline, and/or cumulative effects.

Comment: A few commenters were concerned that we were proposing a different standard when evaluating the effects of ''harmful'' or ''beneficial'' actions or activities, or conversely, that we were not proposing a different standard when we should hold ''beneficial actions'' to a higher certainty standard given their importance in minimizing or offsetting the adverse effects of proposed actions.

Response: Commenters pointed to examples in case law or past projects where actions or measures to avoid, minimize, or offset the effects of agency actions were held to an expectation of ''specific or binding plans.'' While the Services appreciate the concern raised, the Services do not intend to hold beneficial activities or measures offsetting adverse effects to either a higher or lower standard than any other type of action or measure proposed by a Federal agency. Any type of action proposed by a Federal agency first receives a presumption that it will occur, but it must also be described in sufficient detail that FWS or NMFS can both understand the action and evaluate the effects of the action. Similarly, whether considered beneficial or adverse, the consequences of the various components of the Federal agency's action are governed by the same causation standard set forth in the definition of ''effects of the action.''

Comment: A few commenters suggested that the ''effects'' of the action should not include ''effects'' that an agency lacks the legal authority to lessen, offset, or prevent in taking the action.

Response: As we further discuss below under § 402.03, Applicability, the Services decline to limit the ''effects of the action'' to only those effects or activities over which the Federal agency exerts legal authority or control. As an initial matter, section 7 applies to actions in which there is discretionary Federal involvement or control (50 CFR 402.03). Once in consultation, all consequences caused by the proposed action, including the consequences of activities caused by the proposed action, must be considered under the Services' definition of ''effects of the action.'' These may include the consequences to the listed species or designated critical habitat from the activities of some party other than the Federal agency seeking consultation, provided those activities would not occur but for the proposed action under consultation, and both the activities and the consequences to the listed species or designated critical habitat are reasonably certain to occur. Where this causation standard is met, the action agency has a substantive duty under the statute to ensure the effects of its discretionary action are not likely to jeopardize a listed species or destroy or adversely modify its critical habitat. We recognize that the Services and action agencies sometimes struggle with the concept of reviewing the consequences from other activities not under the action agency's control in a consultation. However, including all relevant consequences is not a fault assessment procedure; rather, it is the required analysis necessary for a Federal agency to comply with its substantive duties under section 7(a)(2). When the Services write an incidental take statement for a biological opinion, under section 7(b)(4)(iv) of the Act they can assign responsibility of specific terms and conditions of the incidental take statement to the federal agency, the applicant, or both. As the Supreme Court noted in *Home Builders,* ''*TVA* v. *Hill* thus supports the position . . . that the [Act]'s no-jeopardy mandate applies to *every* discretionary agency action—*regardless* of the expense or burden its application might impose'' (551 U.S. at 671 [emphasis added]).

The legislative history of section 7 of the Act confirms the Services' position. In particular, *National Wildlife Federation* v. *Coleman,* 529 F.2d 359 (1976) is a case often cited to support the proposition that indirect effects outside the authority and jurisdiction of an action agency are a relevant consideration in determining if the agency action is likely to jeopardize a listed species or destroy or adversely modify its critical habitat. The Act's legislative history from 1979 indicates that Congress was fully aware of the *Coleman* decision when they changed the definition from ''does not jeopardize'' to ''is not likely to jeopardize.'' In fact, the House Conference Report 96–697 to the 1979 amendments specifically references the case. In referencing the relevant amendments to section 7, the Conference Report says, ''The conference report adopts the language of the house amendment to section 7(a) pertaining to consultation by federal agencies with the Fish and Wildlife Service and the National Marine Fisheries Service. The amendment, which would require all federal agencies to ensure that their actions are not likely to jeopardize endangered or threatened species or result in the adverse modification of critical habitat, brings the language of the statute into conformity with existing agency practice, and judicial decisions, such as the opinion in *National Wildlife Federation* v. *Coleman.* H.R. Conference Report 96–697 (1979).''

''But for'' Causation

Comment: Several commenters expressed concern that the proposed application of the ''but for'' test to the effects of the proposed action would result in a simplistic evaluation of effects that would miss important considerations of the consequences of multiple effects, synergistic effects, or other more complex pathways by which an action may affect listed species or critical habitat.

Response: As noted elsewhere, the Services have revised the definition of ''effects of the action'' to indicate that all consequences of the proposed action must be considered and to apply the two-part test of ''but for'' and ''reasonably certain to occur'' to all effects. This approach is, in application, consistent with the prior regulatory definition, and the Services accordingly anticipate the scope of their effects analyses will stay the same.

As with current practice, the Services intend to evaluate the appropriate pathways of causation specific to the action and its effects for the purposes of the assessment of impacts to the species and critical habitat. This is not a liability test but an assessment of the expected consequences of an action using, for example, well-founded, physical, chemical, and biotic principles that are relevant to Act consultations. For a consequence to be considered an effect of the action, it must have a causal relationship with the action or activity. ''But for'' causation does not impair the Services' inquiry into other complex scenarios. As we noted above, a complete assessment of the ''effects of the action'' would require, where appropriate, the consideration of multiple stressors and overlapping, synergistic, or contributing factors. All of these considerations are important in ecology, sufficiently captured in the application of the ''but for'' test, and routinely serve as the foundation for section 7(a)(2) analyses. In addition, these consequences would then be added to the environmental baseline, which along with cumulative effects, status of the species and critical habitat, are used to complete our section 7(a)(2) assessment.

Comment: A few commenters urged the Services to adopt a ''proximate cause'' standard as the appropriate standard for determining the effects of the action.

Response: Although the term ''proximate cause'' was used by several commenters, the term itself and its application to the determination of the

effects of the action in the context of the Act generally was not defined by the commenters. There is no Federal standard definition for ''proximate cause,'' a term that developed through judicial decisions. Further, proximate cause can differ if used for assigning liability in criminal action as compared to civil tort matters, neither of which consideration is directly relevant in the section 7(a)(2) context of evaluating the anticipated effects of proposed Federal actions on listed species and critical habitat. With regard to use of proximate cause in an environmental context, in *Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon,* 515 U.S. 687 (1995), Justice O'Connor described proximate cause as ''introducing notions of foreseeability.'' Id. at 709. As set out below, the ''reasonably certain to occur'' test in our definition of ''effects of the action'' imparts similar limitations on causation as an explicit foreseeability test. Additionally, the ''but for'' causation standard is in essence a factual causation standard. The Services' test to determine the effects of the action, therefore, adopts analogous principles to those identified by courts for proximate causation.

Comment: Several commenters cited to National Environmental Policy Act (NEPA) case law, such as *Department of Transp.* v. *Public Citizen,* 541 U.S. 752 (2004) (''*Public Citizen*'') in support of their view of the proper scope of the analysis of the effects of the action and the use of proximate causation to determine those effects.

Response: The Services decline to adopt the sort of ''proximate cause'' standard in the context of section 7 of the Act that has been applied by courts in the NEPA context. A ''proximate cause'' standard has been invoked by courts in the NEPA context (for example, see *Public Citizen,* 541 U.S. at 767). We reviewed the relevant NEPA case law, including *Public Citizen,* and do not think it is determinative in the context of section 7(a)(2) of the Act. The Services concluded that the cases cited were focused on a different issue than what is required when determining the ''effects of the action.'' As the Eleventh Circuit noted in *Florida Key Deer* v. *Paulison,* 522 F.3d 1133 (11th Cir. 2008), *Public Citizen* ''stands for nothing more than the intuitive proposition that an agency cannot be held accountable for the effects of actions it has no discretion not to take.'' *Id.* at 1144. In addition, many of these cases emphasized that the NEPA and Act are not similar statutes and have different underlying policies and purposes. For example, in *Public Citizen,* the Supreme Court emphasized that NEPA's two purposes (to inform the decision-maker and engage the public) would not be served by analyzing those actions over which the action agency had no discretion. *Id.* at 767–68. We agree that the same is true for actions under the Act; that is, by regulation, the Act only applies to actions in which there is ''discretionary Federal involvement or control'' (50 CFR 402.03). See *National Ass'n of Home Builders* v. *Defenders of Wildlife,* 551 U.S. 644, 667 (U.S. 2007) (holding section 7(a)(2) applies to only discretionary Federal actions but distinguishing *Public Citizen* on the grounds that Act ''imposes a substantive (and not just a procedural) statutory requirement'').

With regard to that distinction, the cited cases point to the underlying policy differences between NEPA and the Act, with an emphasis on the affirmative burden on Federal action agencies with regard to endangered species. This is a significant distinction as the Supreme Court noted in *Metro. Edison Co.* v. *People Against Nuclear Energy,* 460 U.S. 766 (1983), ''courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.'' *Id.* at 774 n. 7. The underlying policy of a statute and legislative intent must shape the causation nexus. In that regard, section 7(a)(2) of the Act imposes an affirmative and substantive duty on Federal agencies to avoid actions that are likely to jeopardize listed species or adversely modify/destroy critical habitat. See *Home Builders,* 551 U.S. at 671 (''the [Act]'s no-jeopardy mandate applies to every discretionary agency action—regardless of the expense or burden its application might impose''). In light of the above, and the related reasons the Services discussed in rejecting a ''jurisdiction or control'' limit to the effects of discretionary agency actions, the Services decline to impose an additional proximate causation requirement applicable in the NEPA context for effects of the action under section 7(a)(2).

Comment: One commenter requested that the Services explain how the ''effects of the action'' assessment changes the consideration of ''indirect effects,'' which does not currently use ''but for'' causation.

Response: The original definition of ''indirect effects'' in regulation at § 402.02 refers to effects that are ''caused by'' the proposed action whereas the Services' 1998 Consultation Handbook includes the phrase ''caused by or results from,'' both of which require an assessment of a causal connection between an action and an effect. The ''but for'' causation test in the revised, final definition of ''effects of the action'' is similar to ''caused by'' or ''caused by or results from'' in that both tests speak to a connection between the proposed action and the consequent results of that action, whether they be physical, chemical, or biotic consequences to the environment, the species, or critical habitat, or activities that would not occur but for the proposed action. Both tests require a determination of factual causation, and we do not anticipate a change in the Services' practice in applying ''but for'' causation to consequences once termed ''indirect effects'' compared to the regulatory term ''caused by.'' As we noted in the preamble of the proposed rule, ''[i]t has long been our practice that identification of direct and indirect effects as well as interrelated and interdependent activities is governed by the 'but for' standard of causation. Our [1998] Consultation Handbook states . . . 'In determining whether the proposed action is reasonably likely to be the direct or indirect cause of incidental take, the Services use the simple causation principle: *i.e.,* 'but for' the implementation of the proposed action. . . .' ([1998] Consultation Handbook, page 4–47)'' (83 FR 35178, July 25, 2018, p. 83 FR 35183).

Comment: One commenter expressed concerns that the use of the ''but for'' test could result in a determination of ''effects'' that is over inclusive. They supported the retention of the current rules governing the ''effects of the action'' and advocated their application in conjunction with the multi-factor test for effects described in the 1998 Consultation Handbook. Conversely, one other commenter felt that the test was narrowing the scope and we should retain the term originally used in ''indirect effects,'' ''or result from'' in our 1998 Consultation Handbook definition—in other words ''effects or activities that are caused by or result from.''

Response: The Services requested comment whether the proposed definition altered the scope of the effects of the action. With the revisions we are making in this final rule and as discussed elsewhere in this rule, there will not be a shift in the scope of the effects we consider under our new definition of ''effects of the action,'' and, therefore, our analyses will be neither over nor under inclusive. Some of the commenters expressing concerns about over-inclusivity refer to a multi-factor

test (pages 4–23 through 4–26 of the 1998 Consultation Handbook) for determining the effects of the action, but those factors are important to the consideration of the impact those effects will have on the species or critical habitat and not whether the effects or activity will occur. Those remain important considerations for the analysis of the effects of the action on listed species and critical habitat. Section 7(a)(2) consultation is required for all Federal actions with discretionary involvement or control that may affect listed species or critical habitat. Our assessment of the proposed and revised, final definition of ''effects of the action'' is that, generally, all of the effects previously considered will still be included in the scope of the ''effects of the action'' and that no other effects or activities not a direct or indirect effect of the proposed Federal action will be included. The improvements to the definition of ''effects of the action,'' including the explicit establishment of the two-part test for effects, is that the underlying support for the consequences and activities considered by the Services in the analysis will be guided by a clearer standard and, therefore, be more consistent and transparent. Nor do the Services find that the proposed or revised, final definition of ''effects of the action'' narrows the scope of the effects that would be considered. We have explicitly retained the same full range of effects to listed species or critical habitat from the proposed action as under our prior definition through the inclusion of ''all consequences'' of the proposed action in the revised, final definition.

''Reasonably Certain to Occur''

Comment: Several commenters requested that we articulate a set of factors to apply in determining what effects are reasonably certain to occur from a proposed action.

Response: We agree with the commenters' suggestion. Please see our discussion of changes to § 402.17 under *Section 402.17—Other Provisions,* above.

Comment: Some commenters suggested that the test for effects of the action should also include ''reasonably foreseeable'' as a means of further avoiding speculation or over inflation of the effects of an action or activities.

Response: The Services responded to similar comments in the preambles to the 1986 regulation (51 FR 19926, June 3, 1986, p. 51 FR 19932) and the 2008 regulation (73 FR 76272, December 16, 2008, p. 73 FR 76277). Again in this rule, we decline to make this change. The Services view ''reasonably certain to occur'' to be a higher threshold than ''reasonably foreseeable,'' a term that is more in line with the scope of effects analysis under NEPA. As stated in the 1986 preamble, ''NEPA is procedural in nature, rather than substantive, which would warrant a more expanded review of . . . effects'' than the Act, which imposes ''a substantive prohibition'' (51 FR 19926, June 3, 1986, p. 51 FR 19933). The Act's prohibitions against Federal actions that are likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat calls for a stricter standard than ''reasonably foreseeable.''

Comment: Some commenters requested that the Services elaborate on the factors to consider when determining whether an activity is reasonably certain to occur as part of the two-part test for effects of the action. Others provided proposals of appropriate factors or specificity that should be contained in such an assessment. These included: (1) The extent to which a prior action that is similar in scope, nature, magnitude, and location has caused a consequent action or activity to occur; (2) any existing plans for the initiation of an action or activity by the consulting action agency, the permit or license applicant or another related entity that is directly connected to, and dependent upon, implementation of the proposed action; and (3) the extent to which a potential action or activity has intervening or necessary economic, administrative, and legal requirements that are prerequisites for the action to be initiated and the level of certainty that can be attributed to the completion of such intervening or necessary steps. A few commenters suggested that the only factor should be whether the activity was ''definitely planned and concretely identifiable,'' while others suggested the only factor should be the use of the best scientific and commercial data available.

Response: Identifying activities that are ''reasonably certain to occur'' is one part of the two-part test when evaluating the consequences of a proposed Federal action. As discussed in the proposed rule, this two-part test identifies activities previously captured under ''indirect effects'' and ''interrelated and interdependent actions'' that are now included within ''all consequences'' caused by the proposed action. ''Reasonably certain to occur'' is also the current test in the identification of non-Federal activities that should be included as cumulative effects. Our intent with the proposed factors to consider was to provide a general, but not limiting, guideline to inform the assessment. However, upon consideration of the comments and suggestions, the Services have revised the factors under § 402.17(a) to further elaborate on the factors related to the Service's past experience with identifying activities that are reasonably certain to occur as a result of a proposed action and the type of plans that would be indicative of an activity that is reasonably certain to occur. Suggestions to limit the consideration of activities that are reasonably certain to occur to only those that are ''definitely planned and concretely identifiable'' would inappropriately narrow the scope of our consideration of the effects of a proposed Federal action. For the factors we have identified, we also note that this list of factors is neither exhaustive nor a required minimum set of considerations.

Additionally, the Services have specified that the conclusion that an activity is reasonably certain to occur must be based on clear and substantial information, using the best scientific and commercial data available. We believe these revisions help clarify the potentially relevant factors and the standard the Services will apply to such queries, leading to more consistent and predictable administration of the Services' section 7(a)(2) responsibilities.

Further, nothing in the language of the § 402.17(a) provision conflicts with or prevents the Services from using the best scientific and commercial data available as we are required to do for section 7(a)(2) analyses. This information is quite relevant to our consideration of the factors as both scientific and commercial information can be the sources we draw upon for ''past experience,'' ''existing plans for that activity,'' and ''any remaining . . . requirements.'' In all instances, we will draw upon the best scientific and commercial data available to determine if, in light of the relevant factors and based on clear and substantial information, an activity is reasonably certain to occur.

Comment: A few commenters questioned how ''activities that are reasonably certain to occur'' are defined when the consultation is on national or large regional programs.

Response: Oftentimes, when a section 7(a)(2) consultation is performed at the level of a regional or national program, it is referred to as a programmatic consultation, as defined by the Services in the proposed rule, and the proposed action is referred to as a framework programmatic action from our 2015 rule revising incidental take statement regulations (80 FR 26832, May 11, 2015). In these instances, the ''but for''

and ''reasonably certain to occur'' parts of the test extend to the consequences that would be expected to occur under the program generally, but not to the specifics of actual projects that may receive future authorization under the program. Effects analyses at this more generalized level are necessary because the Federal agency often does not have specific information about the number, location, timing, frequency, precise methods, and intensity of the site-specific actions or activities for their program.

We can expect that a program that authorizes bank stabilization, for example, will result in actions that stabilize riverbanks, streambanks, or even the banks of lakes and estuaries. However, we cannot, within those same bounds, reasonably describe the exact nature of the yet-to-be-permitted bank stabilization, its location, or timing. We are able to provide an informed effects analysis at the more generalized level, however, by analyzing the project design criteria, best management practices, standards and guidelines, and other provisions the program adopts to minimize the impact of future actions under the program. For example, best management practices such as required sediment control methods or stabilization material requirements provide the Services with an understanding of the possible scope of materials and methods that would be expected in any given project even if the specific timing, location, or extent of future unauthorized projects is unknown.

Alternatively, some Federal agencies may be able to provide somewhat more specific information on the numbers, timing, and location of activities under their plan or program. In those instances, we may have sufficient information not only to address the generalized nature of the program's effects but also the specific anticipated consequences that are reasonably certain to occur from specific actions that will be subsequently authorized under the program.

Comment: Several commenters questioned how ''reasonably certain to occur'' relates to the direct effects of a proposed action.

Response: As discussed above, we have revised the definition of ''effects of the action'' so that the reasonably certain to occur standard applies to all consequences caused by the proposed action, which include the effects formerly captured by ''direct'' and ''indirect'' effects and ''interrelated'' and ''interdependent'' activities.

Comment: Several commenters offered suggestions about the ''not speculative but does not have to be guaranteed'' range described by the Services when discussing the range of probability that could encompass ''reasonably certain to occur.'' Some suggested that the determination should settle on whether the effect or activity is ''probable'' or ''likely'' rather than merely ''possible,'' or whether there was ''clear and convincing evidence.'' However, other commenters felt the spectrum was not broad enough because we should consider effects or activities that were possible even if not likely in order to give the benefit of the doubt to the species.

Response: As discussed above, we have revised the regulatory text related to ''reasonably certain to occur'' in the definition of ''effects of the action'' and at § 402.17(a) and (b). Both for activities caused by the action under consultation and cumulative effects, the ''reasonably certain to occur'' determination must be based on clear and substantial information, using the best scientific and commercial data available. The information need not be dispositive, free from all uncertainty, or immune from disagreement to meet this standard. By clear and substantial, we mean that there must be a firm basis to support a conclusion that a consequence of an action is reasonably certain to occur. This term is not intended to require a certain numerical amount of data; rather, it is simply to illustrate that the determination of a consequence or activity to be reasonably certain to occur must be based on solid information and should not be based on speculation or conjecture. This added term also does not mean the nature of the information must support that a consequence or activity is guaranteed to occur.

The Services expect adopting this standard will allow for more predictable and consistent identification of activities that are considered reasonably certain and is consistent with the Act generally and section 7(a)(2) in particular. For similar reasons to those discussed below, we do not read the legislative history from the 1979 amendments to section 7 that included the phrase ''benefit of the doubt to the species'' to require a different outcome.

Definition of Environmental Baseline

The Services proposed to create a standalone definition of ''environmental baseline'' and move the instruction that the ''effects of the action'' are added to the ''environmental baseline'' into the regulations guiding the Services' responsibilities in formal consultation in § 402.14(g). In addition, we requested comment on potential revisions to the definition of ''environmental baseline'' as it relates to ongoing Federal actions, including a suggested revised definition of ''environmental baseline.''

As discussed above in Discussion of Changes from Proposed Rule, the Services received numerous comments on ''environmental baseline'' as it relates to the suggested definition and the treatment of ongoing Federal actions. As a result of the comments received and after further consideration, we have adopted a final, revised definition of ''environmental baseline.'' Below, we summarize the comments received on the definition of ''environmental baseline'' and the revisions to § 402.14(g), and we present our responses.

Comments on the Environmental Baseline Definition

Comment: Many commenters supported the proposal to retain the existing wording of the definition of the environmental baseline, establishing it as a standalone definition under § 402.02, and including the instruction to add the effects of the action and the cumulative effects to the baseline in § 402.14(g)(4). They noted that this would preserve the environmental baseline as a separate and important consideration in the overall section 7(a)(2) analysis. A few commenters felt that this should result in less confusion about what aspects of an ongoing action or a continuation of what could be considered an ongoing action should be in the baseline or the effects of the action.

Response: The Services agree that these proposals would preserve the environmental baseline as a separate and important consideration in the overall section 7(a)(2) analysis and have adopted these proposals in the final rule. Further, although many commenters supported adoption of the existing language, other comments and the Services' experience with implementing the environmental baseline led us to add language to the final, adopted definition to clarify that the focus of the environmental baseline is on the condition of the species and critical habitat in the action area absent the consequences of the action under consultation. In addition, the adopted final, revised definition of the ''environmental baseline'' includes the following clarifying sentence: ''The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are part of the environmental baseline.''

Comment: Several commenters provided their views on the role the

separate assessments of the environmental baseline and the status of the species and critical habitat play in the overall jeopardy and adverse modification analysis and thereby argued that the environmental baseline was too narrow a construct. For example, one commenter suggested the Services eliminate the references to ''action area'' in the definitions of ''environmental baseline'' and ''cumulative effects.'' They stated that, by continuing to limit these definitions to effects in the action area, the Services call into question the validity of their jeopardy and destruction or adverse modification findings.

Response: The commenters appear to misunderstand how the various regulatory provisions (*e.g.,* environmental baseline, status of the species and critical habitat, etc.) guide the Services' section 7(a)(2) analyses. The purpose of our section 7(a)(2) analyses is to determine if the action proposed to be authorized, funded, or carried out by a Federal agency is not likely to jeopardize the listed species and also not likely to destroy or adversely modify critical habitat designated for the conservation of listed species. In section 7(a)(2) analyses, we first consider the status of the species and critical habitat in order to describe the antecedent or preceding likelihood of survival and recovery of the listed species and value of critical habitat that may be affected by the proposed action. For a listed species, for example, this may be expressed in terms of the species' chances of survival and recovery or through discussion of the species' abundance, distribution, diversity, productivity, and factors influencing those characteristics. Following on the status assessment, the purpose of the environmental baseline is to describe, for the action area of the consultation, the condition of the portion of the listed species and critical habitat that will be exposed to the effects of the action. A significant body of scientific literature has established that, without understanding this antecedent condition, we cannot predict the expected responses of the species (at the individual or population level) or critical habitat (at the feature or area level) to the proposed action.

Ultimately, the environmental baseline is used to understand the consequences of an action by providing the context or background against which the action's effects will occur. Comparing alternative courses of action is not the purpose of the environmental baseline—the task is to determine only what is anticipated to occur as a result of what has been proposed. When establishing the environmental baseline, the focus is on the past and present impacts that human activities and other factors (*e.g.,* environmental conditions, predators, prey availability) have had on the fitness of individuals and populations of the species and features or areas of critical habitat in the action area. For example, if we were to consult on pile-driving activities (*e.g.,* the installation of piles or poles into a substrate to support a structure such as a dock by hammering or vibrating the piles into place), the baseline is intended to describe the physiological and behavioral condition of an animal that will be exposed to the sound waves produced by pile driving. This condition is the product of that animal's life history, physiology, and environment and which predisposes the animal to a set reaction or range of reactions to the sound and pressure waves. Animals in good physiological condition may not be perturbed by the action, whereas animals in poor health or stressed by other natural or anthropogenic factors, may leave the area, stop feeding, or fail to reproduce. Numerous case studies in the scientific literature have examined the varying physiological and behavioral responses of individuals to perturbations given the animal's antecedent condition. Similarly, populations of animals respond differently given their abundance, distribution, productivity, and diversity in the action area. The effects of the action and cumulative effects are added to the environmental baseline to determine how (or if) the proposed action affects the fitness of individuals and populations or the function, quantity, or quality of critical habitat features and areas that are exposed to the action given that antecedent condition. Because action areas are often just a small portion of the overall critical habitat designation or contain only some of the individuals or populations that comprise the listed species, the Services must then evaluate whether these action area effects translate into meaningful changes in the numbers, reproduction, or distribution of the listed species or reductions in the functional value or role the affected critical habitat plays in the overall designated critical habitat. This information is then considered with the overall viability of the listed species and value of designated critical habitat to determine if the consequences of the proposed action are likely to appreciably reduce the species' likelihood of survival and recovery and appreciably diminish the value of critical habitat for the conservation of the species. As we noted in the responses to comments on the revised definition of ''destruction or adverse modification,'' the size or proportion of the affected area of critical habitat is not determinative; impacts to a smaller area may in some cases result in a determination of destruction or adverse modification, while impacts to a large geographic area will not always result in such a finding. Similarly, when considering the effects of the action on the likelihood of survival and recovery of listed species, the key consideration is the antecedent status of the species and its vulnerability to further perturbation, not simply a measure of whether the number of individuals affected by the proposed action is ''small'' or ''large.''

Comment: Several commenters requested clarification of the term ''aggregate effects'' and how the Services conduct this analysis, given the proposal to revise ''effects of the action'' and § 402.14(g)(2) and (4) and existing language in the 1998 Consultation Handbook at p. 4–33. This language states, ''The conclusion section presents the Services' opinion regarding whether the aggregate effects of the factors analyzed under 'environmental baseline,' 'effects of the action,' and 'cumulative effects' in the action area—when viewed against the status of the species or critical habitat as listed or designated—are likely to jeopardize the continued existence of the species or result in destruction or adverse modification of critical habitat.'' Commenters were concerned that our proposed revisions would result in only assessing the additional effects of the proposed action and not the ''aggregate effects'' as they are presented in the 1998 Consultation Handbook.

Response: As we noted in the preamble to the proposed rule, our proposed revisions to § 402.14(g)(2) and (4) are intended to clarify the analytical steps the Services undertake in formulating its biological opinion: ''In summary, these analytical steps are: (1) Review all relevant information, (2) evaluate current status of the species and critical habitat and environmental baseline, (3) evaluate effects of the proposed action and cumulative effects, (4) add effects of the action and cumulative effects to the environmental baseline, and, in light of the status of the species and critical habitat, determine if the proposed action is likely to jeopardize listed species or result in the destruction or adverse modification of critical habitat'' (83 FR 35178, July 25, 2018, p. 83 FR 35186). These steps encompass the ''aggregate effects'' of adding the effects of the action to the

environmental baseline, and then taken together with cumulative effects, considering those results in light of the status of the species and critical habitat. There is no change from current Service practice or the ''aggregate effects'' guidance in the 1998 Consultation Handbook.

Comment: One commenter noted that often there is not enough information available to quantify impacts in the baseline and that sometimes that quantification is needed to do the effects analysis. Another commenter argued for a scientific defensibility standard before putting effects into the environmental baseline for a species to avoid speculation about past impacts.

Response: The Services acknowledge that sometimes information about the impacts of the environmental baseline in a particular action area is sparse or lacking and that this can complicate our ability to analyze the effects of a proposed Federal action. Nevertheless, we are required to use the best scientific and commercial data available, or that can be obtained during consultation, in our assessments. The use of the ''best scientific and commercial data available'' is the required standard which both the Services and the Federal agency must meet.

Comment: Tribal commenters suggested adding the concept of tribal water rights to the definition of environmental baseline to ensure that effects are added to the Tribe's existing right rather than the other way around and also suggested that the baseline should be set to describe the time when the species and habitat were abundant to provide the context of the harms humans have caused and also include an assessment of the coming harms of climate change.

Response: Tribal water rights are important and may be relevant in determination of the environmental baseline. We are not changing the basic concept of the environmental baseline—it will continue to be used as a tool to determine whether the effects of an action under consultation are or are not likely to jeopardize the continued existence of a species or destroy or adversely modify designated critical habitat. We will determine the appropriate baseline at the time of consultation and include those factors relevant to that particular consultation.

Comment: A few commenters questioned whether natural factors would be considered in the environmental baseline as those may also play a role in the status of the species and critical habitat, and also whether impacts to species and habitat due to climate change within and outside of the action area would be considered.

Response: Although the definition of ''environmental baseline'' captures the impacts of anthropogenic activities in the past, the present, and future Federal projects that have already undergone consultation, a true discussion of the environmental baseline would be incomplete without a discussion of relevant natural factors or processes that inform the condition of the species or critical habitat in the action area. For example, natural processes such as fire and flood, or the natural erosion of sediments may play a key role in species productivity, or certain geographic features in an action area may affect the viability and connectedness of the individuals, populations, or habitat features.

Nothing in these regulations changes the manner in which the Services may consider climate change in our consultations. The depth of consideration of the effects of climate change on the species and critical habitat will vary from consultation to consultation based on the best scientific and commercial data available. The effects of climate change on the species or critical habitat (not related to effects of the action) within and outside the action area will be addressed, as appropriate, in the environmental baseline or status of the species, respectively.

Comment: Some commenters supported the suggested revised definition of ''environmental baseline'' that was presented in the preamble of the proposed rule. Those in support agreed with different treatment for ongoing (or pre-existing) actions or effects and felt that this would avoid overstatement or analysis of the effects of ongoing actions under consultation.

Response: As discussed above, the Services have revised the definition of environmental baseline, emphasizing that the baseline is the condition of the species and critical habitat in the action area without the consequences of the proposed action and adding a third sentence to explain that the consequences from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify will be included in the environmental baseline. The Services believe these revisions address the comments received and are consistent with the existing case law and the Services' current approach to this issue.

Comment: Some commenters suggested adopting the NEPA ''cumulative effects'' approach to capture the baseline instead of either the current definition or the proposed revision.

Response: The Services decline to adopt the NEPA definition because the NEPA term captures a different set of concepts.

Comment: Most commenters opposed to the alternative definition described in the preamble of the proposed rule were opposed on three bases: (1) That the ''state of the world'' is overly broad and ambiguous and should be replaced by ''action area'' or similar; (2) that the proposed approach was unlawful and contrary to established case law, and invites speculation about the conditions that would exist absent an action; and (3) that the proposed treatment of ''ongoing activities'' could have the effect of narrowing the appropriate scope of the effects analysis (and contrary to case law) while also ''grandfathering'' in harmful operations or activities that should be subject to section 7 analysis (for example, the U.S. Supreme Court has held that ''it is clear Congress foresaw that [section] 7 would, on occasion, require agencies to alter ongoing projects in order to fulfill the goals of the Act'' (*Tennessee Valley Authority* v. *Hill,* 437 U.S. 153, 186 (1978))).

Response: The Services agree that the phrase ''state of the world'' is broad. As discussed above, the Services have declined to include that wording, and we confirm that the scale of the environmental baseline is the action area. The concern by one commenter that harmful impacts would be grandfathered into the environmental baseline is addressed by clarification in the third sentence. That sentence clarifies that in circumstances where there are consequences to listed species or critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify, those would be included and considered in the environmental baseline and as part of the overall aggregation of effects described in § 402.14(g). Regarding the reference to *TVA* v. *Hill,* the ongoing project in question was within the discretion of the action agency to modify, and thus our definition is consistent with the court's holding.

Comment: Several commenters suggested that creation of specific language or guidance in regulation to address those complex cases of ongoing actions would be a better approach rather than trying to apply one definition to all actions that undergo consultation.

Response: We have revised the definition of environmental baseline to address ongoing actions. Additionally,

the Services provide some basic discussion of the treatment of this issue earlier in this rule. In most instances, the resolution of ongoing agency activities or existing agency facilities will be a fact-based inquiry that turns on the circumstances of a particular consultation.

Comment: Some commenters argued against viewing any improvements in ongoing activities as ''beneficial'' and that they should be evaluated appropriately as ongoing adverse (albeit reduced) effects of an action and not through improper comparative or incremental analyses.

Response: The definition of environmental baseline does not alter the manner in which the effects of the action are characterized. As discussed earlier, per § 402.03, all discretionary actions are examined against the section 7(a)(2) standard, including beneficial and adverse effects. Consultation under the Act is conducted on the effects of the entire proposed action (all consequences caused by the proposed action). To further clarify, proposed actions for ongoing activities that incrementally improve conditions but still have adverse effects (*i.e.,* are not wholly beneficial) require formal consultation. As noted in the preceding response, the analysis of an action's effects is a fact-based, consultation-specific analysis.

Comment: Some commenters argued that ongoing operations or infrastructure should not be considered as part of the effects of the action even in the case of a new license or permit if those operations or infrastructure are unchanged and that only changes in operations or infrastructure would undergo effects analysis. In contrast, other commenters noted that operations are only considered ''ongoing'' until the valid permit period terminates.

Response: As discussed earlier, the new definition clarifies how to correctly differentiate between consequences belonging in the environmental baseline and of those of the proposed action in effects of the action for the situations described by the commenters.

Comment: A few commenters noted that the purpose of the environmental baseline is not to create a hypothetical environment in which certain features, projects, or events have, or have not, occurred. Those commenters assert that, in establishing the environmental baseline, the action agency and the Services are not picking and choosing facts, they are observing and recording data on the present conditions. They further assert that the environmental baseline should include both past and present effects of existing structures that the Federal action agency has no discretion to modify and any impacts from their continued physical existence are not part of the proposed action, which is properly focused on future project operations.

Response: As discussed earlier, there are certain consequences from ongoing activities or existing facilities that, in and of themselves, would not be subject to the consultation on a particular proposed action. They are not ignored, however, as they may appropriately be included in discussions of baseline or status of the species or critical habitat. The Services' definition gives appropriate direction on recognizing those circumstances and identifying their consequences.

Comment: Several commenters expressed concern that it was difficult to provide informed public input absent any examples of the types of ongoing actions that the Services were intending to address with the suggested definition or the accompanying questions posed regarding the treatment of these challenging cases.

Response: As discussed earlier, the Services have added a third sentence to better clarify the issue of capturing the consequences of ongoing activities in the environmental baseline. This third sentence and our supporting example of the Federal dam and water operations provides the type of ''challenging case'' to which we referred in the preamble of the proposed rule.

Definition of Programmatic Consultation

We proposed to add a definition for the term ''programmatic consultation'' to codify a consultation technique that is being used with increasing frequency and to promote the use of programmatic consultations as effective tools that can improve both process efficiency and conservation in consultations. We received numerous comments on the proposed definition, several of which requested further clarification of the definition terms, scope, and geographic extent of activities and process for programmatic consultations. The discussion below contains the Services' responses to these comments.

Comment: Some commenters recommended the Services clarify the scope of activities, geographic extent, and coverage for multiple species that can be addressed in a programmatic consultation. Other commenters requested clarification that programmatic consultations are optional processes that can undergo both formal and informal consultations. A few commenters also provided suggestions regarding participation of applicants, multiple Federal agencies, and information that can be used in the development of the program.

Response: Section 7 of the Act provides significant flexibility for Federal agency compliance with the Act, and various forms of programmatic consultations have been successfully implemented for many years now. This final regulation codifies that general practice and provides a definition that is not intended to identify every type of program or set of activities that may be consulted on programmatically. The programmatic consultation process offers great flexibility and can be strategically developed to address multiple listed species and multiple Federal agencies, including applicants as appropriate, for both informal and formal consultations.

While action agencies do have a duty to consult on programs that are considered agency actions that may affect a listed species or critical habitat, many types of programmatic consultation would be considered an optional form of section 7 compliance to, for example, address a collection of agency actions that would otherwise be subject to individual consultation. These optional types of programmatic consultation may be appropriate for a wide range of activities or a suite of programs.

Comment: Several commenters expressed concern about the scale at which programmatic consultations would occur. Some wanted to clarify that site-specific ''tiered'' evaluations were required to insure the same level of review for standard consultations, while another was concerned that only site-specific consultations would be completed without an overall ''holistic'' evaluation at the program level.

Response: As described in the proposed rule, and in the 2015 incidental take statement final rule (80 FR 26832, May 11, 2015), programmatic consultations may require section 7(a)(2) analyses at both the program level as well as at the tiered or step-down, site-specific level to insure compliance with section 7(a)(2) of the Act. Regardless of the exact process required to complete the consultation for the proposed program activities, all consultations are required to fully satisfy section 7(a)(2) of the Act. Programmatic consultations can be used to assess the effects of a program, plan, or set of activities as a whole. Depending on the type of programmatic consultation, site-specific consultations would be completed using the overarching analysis provided for in the programmatic consultation.

Comment: One commenter suggested the Services more clearly explain in the

preamble to the final rule how the terms ''framework programmatic action'' and ''mixed programmatic action'' relate to ''programmatic consultation.''

Response: As defined at § 402.02, ''framework programmatic action'' and ''mixed programmatic action'' refer to the way in which an agency's programmatic actions are structured. These definitions are applied specifically in the context of incidental take statements. The definition of ''programmatic consultation'' refers to a consultation addressing an action agency's multiple actions carried out through a program, region, or other basis. A consultation on either a mixed or framework programmatic action would be characterized as a programmatic consultation. As explained in the 2015 incidental take statement final rule (80 FR 26832, May 11, 2015), a framework programmatic action establishes a framework for the development of specific future actions but does not authorize any future actions and often does not have sufficient site-specific information relating to the project-specific actions that will proceed under the program, but still requires a programmatic consultation to meet the requirements of section 7(a)(2). As specific projects are developed in the future, they are subject to site-specific stepped-down, or tiered consultations where incidental take is addressed. Mixed programmatic actions generally are actions that have a mix of both a framework-level proposed action as well as site-specific proposed actions. Again, the entire mixed programmatic action requires a programmatic consultation, but in this situation, incidental take is addressed ''up front'' for the parts of those site-specific actions that are authorized in the mixed programmatic consultation, and stepped-down or tiered consultations are required for the future projects that are under the framework part of the proposed action.

Section 402.13—Deadline for Informal Consultation

In the proposed rule, we requested public comment on several questions related to the need for and imposition of a deadline on the informal consultation process described within § 402.13. Specifically we asked: (1) Whether a deadline would be helpful in improving the timeliness of review; (2) the appropriate length for a deadline (if not 60 days); and (3) how to appropriately implement a deadline (*e.g.,* which portions of informal consultation the deadline should apply to [*e.g.,* technical assistance, response to requests for concurrence, etc.], when informal consultation begins, and the ability to extend or ''pause the clock'' in certain circumstances, etc.).

Based upon the comments received and upon further consideration, the Services have revised the language within § 402.13 to provide a framework and timeline on a portion of informal consultation. The revised regulatory text for § 402.13 is described earlier in this final rule. Here we provide a summary of the comments we received and our responses.

Comment: Those commenters who supported the imposition of a deadline generally supported: (1) That the deadline applies to the concurrence request and response aspect of informal consultation, (2) that 60 days seems reasonable (and some suggested an internal or prior time period of 15–30 days for sufficiency review), and (3) that the deadline should be extendable by mutual agreement with the Federal agency and applicant (as appropriate). One commenter was concerned that a 60-day deadline would have the adverse consequence of making 60 days the new norm for concurrence responses rather than the current condition of generally 30 to 45 days.

Response: As described at § 402.13, informal consultation is an optional process that includes all discussions, correspondence, etc., between the Services and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. One aspect of the informal consultation process is the further option that, if a Federal agency has determined that their proposed action is not likely to adversely affect listed species or critical habitat, they may conclude their section 7(a)(2) consultation responsibility for that action with the written concurrence of the Services. It is this final aspect of the informal consultation process that has received the most scrutiny and concerns about timeliness and the ability of Federal agencies to proceed with actions that are not likely to adversely affect listed species or critical habitat. The Services specifically requested comment on this issue in the proposed rule, including whether to add a 60-day deadline, subject to extension by mutual consent, for informal consultations.

The Services have considered the comments provided on all sides of this issue. We have developed regulatory text that addresses many of the recommendations; others are addressed in these responses to comments but not within the regulatory text. In summary, the regulatory text applies a 60-day deadline to the ''request for concurrence and Service's written response'' aspect of the overall informal consultation process originally described at § 402.13(a) and now moved to § 402.13(c). This new section has been revised to include the deadline for the concurrence process and the requirement on the Federal agency to provide sufficient information in their request for concurrence to support their determination of ''may affect, not likely to adversely affect'' for listed species and critical habitat in order to start the 60-day clock on the Service's written response. The new § 402.13(c)(2) also provides for the Service's ability to extend the timeline upon mutual agreement with the Federal agency and any applicant for up to an additional 60 days. As a result, the entire written request and concurrence process is allowed a total of 120 days from the Service's receipt of an adequate request for concurrence as described in § 402.13(c)(1).

The Services note that our ability to provide a written response is hampered if we do not receive an adequate request for concurrence. Ideally, the Services should be able to concur in the Federal action agency's well-supported conclusion without having to create unique supplemental substantive analyses. The more that the Services have to supplement the Federal action agencies' own analyses, the more time it will take the Services to determine whether they concur.

The revised regulation points to the types of information required to initiate formal consultation under § 402.14(c)(1) as indicative of the type of information that should be included in a request for concurrence. We also note in the preamble that the level of detail is likely less than that required to initiate formal consultation. Federal agencies, designated non-Federal representatives, and applicants preparing the request for concurrence should draw upon any technical assistance provided by the Services during informal consultation and provide the amount and type of information that is commensurate with the scope, scale, and complexity of the proposed action and its potential effects on listed species and critical habitat. The Services hope to gain efficiencies in avoiding unnecessary back and forth between the Services and Federal agency by describing the information required to obtain the Services' concurrence in the revised regulation. Federal agencies submitting requests for concurrence that contain this information allow the Services to adequately evaluate whether the

concurrence is appropriate and readily meet the 60-day deadline.

Comments regarding a time period for ''sufficiency review'' are referring to the Service's review of the request for concurrence. This review is to determine if the information provided is sufficient for the Services to understand the Federal agency's action and analysis and to evaluate whether we can prepare a written response. Consistent with the approach for initiation of formal consultation, the Services have not included a specific regulatory timeline on any sufficiency review of the request for concurrence. Similar to some formal consultation initiation packages, some requests for concurrence may not initially meet the requirements. The Services are committed to providing review of these requests in a timely fashion to alert the Federal agency if more information is required to constitute an adequate request for concurrence. For formal consultations, the Services typically provide this type of sufficiency review within 30 days of receipt of the request for formal consultation and an accompanying initiation package. A similar timeframe will guide the Services' review of requests for concurrence as well.

Finally, while the revised regulation includes a 60-day deadline for the Service's written response to a request for concurrence, we allow this much time (and the option to extend) to accommodate the wide range in the type of Federal actions for which we receive requests for concurrence. We anticipate that those actions that can be responded to in less time than 60 days will still receive those quicker concurrence responses. We do not expect the revised regulation to result in an increase in numbers of concurrence requests such that our ability to respond within 60 days will be hindered. In those limited instances in which the Services need to extend the deadline for up to 60 additional days, the regulation requires the mutual consent of the Federal agency and any applicant involved in the consultation.

Comment: Those commenters opposed to the imposition of a deadline generally did so on one of two bases: (1) The data we present indicates that we generally complete concurrence requests in a timely fashion and so no deadline was necessary, or (2) a deadline could have the effect of truncating or hampering the ability of Federal agencies and the Services to conduct effective informal consultations generally.

Response: We have applied the timeline only to the request for concurrence aspect of the informal consultation process. This preserves the ability of Federal agencies, applicants, non-Federal representatives, and the Services to conduct those discussions that form the heart of this optional process without a time constraint. Although the Services generally provide our response to requests for concurrence in a timely fashion, it seems prudent to include both a general timeline for concurrence request responses and an option for extending that timeline to provide certainty and consistency for Federal agencies and applicants planning and proposing actions. Additionally, as discussed above, by specifying the information to be included in a concurrence request, the Services also anticipate gaining additional efficiencies in the informal consultation process.

Comment: A few commenters were concerned that failure to achieve mutual consent for time extensions could force the Services to complete their response to a request for concurrence with limited or poor information on the action and its effects.

Response: The Services do not believe this concern will result in the outcome predicted by the commenters. Under the new § 402.13(c)(1), the timeframe for the Services' concurrence response only commences once the Services have the information necessary to evaluate the Federal agency's request for concurrence.

Comment: A few commenters advocated that a failure by the Services to respond to a request for concurrence within the established deadline should result in an assumed concurrence, so the Federal agency may proceed with their action.

Response: The Services decline to make this change. As adopted, the regulation requires the Services to provide their response within the specified timeframe. Additionally, the concurrence of the Services assures the Federal agency that it has appropriately complied with its responsibilities under section 7(a)(2).

Comment: Some commenters questioned the consequence of a non-concurrence response from the Service—would formal consultation be automatically initiated? Others proposed that automatic initiation of formal consultation would be the preferred outcome.

Response: Formal consultation would not automatically be initiated. Typically, the next step if the Service does not concur with the Federal agency's determination of ''may affect, not likely to adversely affect'' would be either the Federal agency requesting formal consultation or the continuation of informal consultation. Upon receipt of the Service's non-concurrence, there is still an opportunity for the Federal agency to further modify either their action or their supporting analysis in response to information outlined in the Service's response. Such modification could then result in a written concurrence from the Service. Further, the Services cannot automatically initiate formal consultation if we have not already received the information required at § 402.14(c)(1) in the Federal agency's request for concurrence at the level of detail necessary to initiate formal consultation. While the information provided by the Federal agency will have satisfied the requirements of § 402.13(c)(1) for informal consultation, which generally requires the same types of information as § 402.14(c)(1) for formal consultation, the Services decline to require that formal consultation be automatically initiated upon our non-concurrence, since we cannot assume that the information required to initiate formal consultation will have been received or even that formal consultation will be necessary.

Comment: A few commenters stated that imposition of a deadline for any aspect of informal consultation would increase the workload and time constraints on Service staff and that any imposed deadline should come with a commensurate increase in Service staff resources to meet such obligations.

Response: The Services do not anticipate either an increase in requests for concurrence or time constraints on staff. Currently, the Services are generally delivering concurrence request responses in a timely fashion, and the adopted regulation would allow for time extension requests for actions that require more time to review and respond.

Section 402.14—Formal Consultation—General—Including What Information is Needed To Initiate Formal Consultation and Considering Other Documents as Initiation Packages

We proposed to revise § 402.14(c) to clarify what is necessary to initiate formal consultation. We also proposed to allow the Services to consider other documents as initiation packages, when they meet the requirements for initiating consultation. It is important to note the Services did not propose to require more information than existing practice; instead, we clarify in the regulations what is needed to initiate consultation in order to improve the consultation process. The Services adopt these proposed changes, and one non-substantive edit, in this final rule. We

summarize the comments received on these topics and our responses below.

Comment: Some commenters supported clarifying what is necessary to initiate the formal consultation process and the description of what is required in the initiation package. Those commenters said the proposed revisions, if implemented, could streamline the consultation process and reduce the need for extensive communications between the Federal agency and the Services to start the consultation process.

Response: The Services agree that clarifying what is necessary to initiate the formal consultation process and the description of what is required in the initiation package will help create efficiencies in the section 7 consultation process.

Comment: Commenters suggested clarifying the information to be submitted by an applicant to initiate formal consultation (*e.g.,* listing the categories of information required, increasing the use of data sources like GIS that meet appropriate standards, NEPA analyses, conservation work by landowners and agencies, Natural Resource Damage Assessment and Restoration Plans to support the initiation package).

Response: Applicants and designated non-Federal representatives may prepare or supply information required as part of the initiation package outlined at § 402.14(c)(1). These are the required elements necessary to initiate consultation. To be clear, this package is submitted to the Services by the Federal agency proposing the action and should also include the Federal agency's information and supporting analyses for the initiation package. As the Services stated in the proposed rule's preamble, in order to initiate formal consultation we will consider whatever appropriate information is provided as long as the information satisfies the requirements set forth in § 402.14(c)(1), including the types of information described by the commenters.

Comment: One commenter also suggested that the Services should include language in the final rule specifying that we can request additional information or documentation if an agency's initial submission is deemed inadequate.

Response: This proposed change is unnecessary. The Services already request Federal agencies and applicants provide information necessary to initiate consultation when it has not been provided or is unclear in the original initiation package. As discussed for informal consultation above, the Services typically provide this type of sufficiency review within 30 days of receipt of the request for formal consultation and an accompanying initiation package. No further regulatory language is required to specify that we can request this information because initiation of formal consultation is predicated on provision of the required information as per § 402.14(c)(1). Further, as already provided by § 402.14(d) and (f), additional information may be needed or requested by the Services during the formal consultation, once it is initiated.

Comment: One commenter suggested that the Federal Energy Regulatory Commission's decision not to require a study under the Federal Power Act should not be construed as a failure to meet the information requirements to initiate consultation under the Act.

Response: In general, 50 CFR 402.14(d) provides that the Federal agency requesting formal consultation is required to provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. The Federal Energy Regulatory Commission's decision whether or not to require a study under the Federal Power Act will generally occur before that Federal agency would request initiation of formal consultation. The requirements for information that the Federal agency must submit to the Service to initiate formal consultation are described at § 402.14(c)(1). The Service's determination of whether or not the Federal agency has provided sufficient information to meet the requirements to initiate formal consultation under § 402.14(c)(1) will depend on the specific information that the Federal agency submits and the specific circumstances for each request.

After formal consultation has been initiated, § 402.14(f) provides that the Service may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. The Service's request for additional data after initiation of formal consultation is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act (or § 402.14(c)(1)). If the Federal agency does not agree to the request for extension of formal consultation, the Service will issue a biological opinion using the best scientific and commercial data available.

Comment: Commenters suggested that the Services should clarify that, upon the submittal of such information, formal consultation is initiated for purposes of starting the clock by which the deadline for completing consultation will be measured.

Response: The prior regulations at § 402.14(c) and (d), and the revision to § 402.14(c) in this rule, are clear that a request to initiate consultation shall include the list of information provided at § 402.14(c)(1) and use the best scientific and commercial data available. Requests received that meet these criteria constitute an ''initiation package'' and thus start the consultation ''clock.'' Incomplete requests do not constitute an ''initiation package'' and therefore the consultation ''clock'' does not begin until the information is received. No further regulatory language is needed.

Comment: One commenter suggested striking language implying that an additional information request by the Service under § 402.14(f) may impose a study-funding mandate or obligation upon an applicant or non-Federal party.

Response: The Services decline to change the language in § 402.14(f). This language provides that the Service may request additional information necessary to formulate the Service's biological opinion once formal consultation has been initiated. Section 402.14(f) further states that the responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. Because the ultimate responsibility to comply with section 7(a)(2) lies with the Federal agency and not the Service, this language clarifies that the Service is not responsible for conducting or funding the requested studies.

Comment: One commenter stated that the contents of recovery plans do not dictate the outcome of the section 7 consultation process.

Response: We agree that recovery plans do not dictate the outcome of a section 7 consultation. However, the Services believe it is appropriate to use relevant information and recommended actions and strategies found in recovery plans along with other identified best scientific and commercial data available as we consult with Federal agencies and applicants. We encourage Federal agencies and applicants to become familiar with recovery plans for species they may affect, as this can assist them in developing proposed actions that avoid, reduce, or offset adverse effects or propose actions that address recommended recovery actions.

Comment: One commenter suggested support for the proposed definition of programmatic consultation and the use of programmatic consultations and the addition to § 402.14(c)(4).

Response: As discussed above, the Services agree that increasing the use of programmatic consultations will increase efficiency, reduce costs, and still fulfill section 7(a)(2) responsibilities.

Comment: One commenter suggested that the Services should commit to a set timeframe for notifying the Federal agencies if the initiation package is complete for non-major construction activities (*e.g.,* 30 to 45 days should be sufficient).

Response: The 1998 Consultation Handbook already specifies that for formal consultation leading to the development of a biological opinion the Services should, within 30 days, acknowledge the receipt of the consultation package and advise if additional information necessary to initiate consultation is required. This is the same timeframe for the Services to respond to a Federal agency's biological assessment prepared for a major construction activity under § 402.12(j). For biological assessments, § 402.12(f) provides that ''the contents of a biological assessment are at the discretion of the Federal agency.'' This regulation continues to govern the Federal agency's responsibilities for the contents of a biological assessment; however, for purposes of initiation of formal consultation under § 402.14(c)(1), the Federal agency also is required to provide the specified information in § 402.14(c)(1) consistent with the nature and scope of the action. Although § 402.12(j) allows that ''at the option of the Federal agency, formal consultation may be initiated under § 402.14(c) concurrently with the submission of the assessment,'' this language does not relieve the Federal agency of the requirement to submit a complete initiation package per § 402.14(c)(1), but does give the Federal agency the option to include such information along with the contents of their biological assessment.

Comment: One commenter stated that the Services have proposed a massive rewrite of § 402.14(c) without explaining to the public the underlying rationale for any of the changes in any detail. Thus, the proposal fails to meet the basic requirements of the Administrative Procedure Act, is not rational, and is arbitrary and capricious.

Response: The Services disagree that the revisions to § 402.14(c) are a massive rewrite of the section. As discussed in the preamble to the proposed rule, the Services are not requiring more information than existing practice. The Services adopt the changes to § 402.14(c) based on years of experience implementing section 7 of the Act and believe that the revisions will provide clarity to the consultation process, increase efficiencies in the process, and meet Administrative Procedure Act requirements. The revisions to the language are based on the experiences of the Services and are intended to better describe the types of information required and the level of detail sufficient to initiate formal consultation. This rationale is explained in the preamble to the proposed regulations at 83 FR at 35186 (July 25, 2018).

Comment: One commenter suggested the Services not include § 402.14(c)(1)(i)(A) (the purpose of the action) because they do not believe the purpose of the action is relevant to the consultation.

Response: The Services decline to remove the requirement for a description of the purpose of the action from the initiation package at § 402.14(c)(1). The purpose of the action is important for the Services to understand and most effectively consult with Federal agencies and applicants in a variety of ways. During consultation, an understanding of the intended purpose of the action assists the Services in shaping recommendations they may make to avoid, minimize, or offset the adverse effects of proposed actions. Further, the purpose of the action is an important consideration when determining what activities may be caused by the proposed Federal actions and for determining what effects may result in take of listed species that is incidental to the purpose of the proposed action. Finally, the definition of reasonable and prudent alternative at § 402.02 includes the requirement that the alternative ''can be implemented in a manner consistent with the intended purpose of the action.''

Section 402.14—Service Responsibilities—General

We proposed to revise portions of § 402.14(g) that describe the Services' responsibilities during formal consultation. We proposed to clarify the analytical steps the Services undertake in formulating a biological opinion. In § 402.14(g)(4), we proposed to move the instruction that the effects of the action shall be added to the environmental baseline from the current definition of ''effects of the action'' to where this provision more logically fits with the rest of the analytical process. We have adopted these proposed changes in this final rule and provide the comments received on these changes and our responses below.

Comment: One commenter requested that the Services revise § 402.14(g)(4) to add text to reiterate the appropriate test for jeopardy as follows: ''Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species by appreciably reducing the likelihood of both survival and recovery of the species, and not recovery alone, or result in the destruction or adverse modification of critical habitat.''

Response: The term ''jeopardize the continued existence'' is already defined in regulations at § 402.02. All subsequent uses of this terminology are referenced to that definition and thus no further clarification is needed in § 402.14(g)(4).

Comment: A couple of commenters suggested the Services clarify that nothing in the Act requires Service staff to utilize worst-case scenarios or unduly conservative modeling or assumptions.

Response: The commenters are correct that nothing in the Act specifically requires the Services to utilize a ''worst-case scenario'' or make unduly conservative modeling assumptions. The Act does require the use of the best scientific and commercial data available by all parties and obligates Federal agencies to insure their actions are not likely to jeopardize listed species or adversely modify critical habitat. The best scientific and commercial data available is not limited to peer-reviewed, empirical, or quantitative data but may include the knowledge and expertise of Service staff, Federal action agency staff, applicants, and other experts, as appropriate, applied to the questions posed by the section 7(a)(2) analysis when information specific to an action's consequences or specific to species response or extinction risk is unavailable. Methods such as conceptual or quantitative models informed by the best available information and appropriate assumptions may be required to bridge information gaps in order to render the Services' opinion regarding the likelihood of jeopardy or adverse modification. Expert elicitation and structured decision-making approaches are other examples of approaches that may also be appropriate to address information gaps. In all instances, chosen scenarios or assumptions should be appropriate to assist the Federal agency in their obligation to insure their action is not likely to jeopardize listed species or adversely modify critical habitat.

Comment: Commenters support expanded opportunities for participation by States, applicants, and designated non-Federal representatives in the section 7(a)(2) consultation process, including the review of the underlying data and scientific analyses being considered and greater input into any potential jeopardy or adverse modification finding, the development of reasonable and prudent alternatives and minimization measures, and all parts of the draft biological opinion.

Response: The Services already involve designated non-Federal representatives and applicants during key points of the consultation development process and will continue to do so as appropriate. Federal action agencies are best positioned to engage and encourage the involvement of applicants and designated non-Federal representatives in the review of draft biological opinions. The consultation process is intended to assist the Federal action agency in meeting its section 7(a)(2) obligations under the Act. Applicants and designated non-Federal representatives play an important role in this process. States may be engaged by Federal action agencies and applicants during the development of the proposed actions and supporting analyses.

Comment: One commenter suggested that the Federal agency or applicants be involved in the development of ''Reasonable Prudent Measures'' and/or ''Terms and Conditions'' as needed to ensure they are implementable and do not require major alterations of the proposed action of a plan or project in terms of design, location, scope, and results.

Response: The Services already involve Federal action agencies and applicants during key points of the consultation development process and will continue to do so as appropriate. Federal action agencies are best positioned to engage and encourage the involvement of applicants and designated non-Federal representatives in the review of draft biological opinions, including draft incidental take statements.

Comment: One commenter requested that when proposed actions have the potential to affect tribal rights or interests, formal consultation section pursuant to § 402.14(l)(3) should require disclosure of all information to affected tribes, adherence to policies regarding consultation with Native American governments, and an analysis of how the action or reasonable and prudent alternatives comport with the conservation necessity standards embodied in Secretarial Order 3206, NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations, and the FWS Native American Policy.

Response: As discussed above, the Services will continue to comply with Secretarial Order 3206, NOAA Procedures, and the FWS Native American Policy and other applicable tribal policies as we implement our section 7 responsibilities.

Comment: One commenter supports the codification that the Services will give ''appropriate consideration to any beneficial actions as proposed or taken by the Federal agency or applicant, including any actions taken prior to the initiation of the consultation.''

Response: Most of the quoted language, with the exception of ''as proposed,'' is already included in § 402.14(g)(8) and has been retained in the revisions to that provision. This final rule codifies the language the commenter supported.

Comment: One commenter suggested that the definition of a programmatic consultation should be modified to ''clarify that the Services may utilize programmatic consultations and initiate concurrent consultations for multiple similar agency actions.''

Response: The adopted definition of programmatic consultation already encompasses the commenters' request, making the proposed change unnecessary. As discussed above, programmatic consultations are flexible consultation tools that may be developed based on the circumstances of the proposed action and the Federal agency(ies) involved.

Comment: One commenter suggested that the consultation ''clock'' should start at the point the submission of a written request for formal consultation is transmitted to the Service with a certification that it has transmitted to the Service all of the relevant and available information upon which the action agency's request for consultation and opinion has been made.

Response: The Federal agency is obligated to provide the information necessary to initiate formal consultation. It is the Services' responsibility to determine that we have sufficient information to initiate formal consultation. The adopted language at § 402.14(c)(1) defines the information necessary to initiate formal consultation. We adopt this list to clarify and reduce confusion about the necessary information and create greater efficiencies in the section 7 consultation process. Starting the ''clock'' at the point suggested by the commenter truncates the time necessary to obtain needed information if it was not in fact provided, reduces the ability of the Services to adequately coordinate with the Federal agency, non-Federal representative and/or applicant, and could actually lengthen the consultation process because of the need on the part of the Services to request additional information during consultation.

Comment: One commenter suggested that the Services have not clarified the language pursuant to formal consultations (§ 402.14) and that measures intended to avoid, minimize, or offset effects of an action are not required elements of an ''initiation package'' submitted by a Federal agency for the consultation.

Response: Consistent with the Services' existing consultation approaches, we are adopting revisions to § 402.14(c) to ensure that a Federal agency submits an adequate description of the proposed action, including available information about any measures intended to avoid, minimize, or offset effects of the proposed action. The request for a description of measures to avoid, minimize, or offset project impacts applies in those cases where these types of measures are included by the Federal agency or applicant as part of the proposed action and is not intended to require these types of measures for all proposed actions. Provided the Federal agency submits the information required by § 402.14(c)(1), the Services will take into consideration the effects of the action as proposed, both beneficial and adverse.

Section 402.14(g)(4)—Service Responsibilities—Clarifying the Analytical Steps by Which the Services Integrate and Synthesize Their Analyses To Reach Jeopardy and Adverse Modification Determinations

In § 402.14(g)(4), we proposed revisions to better reflect the manner in which the Services integrate and synthesize their analyses of effects of the action with cumulative effects, the environmental baseline, and status of the species and critical habitat to reach our jeopardy and adverse modification determinations. This proposed change reflects the Services' existing approach, and we adopt those proposed changes in this final rule. The comments and our responses on those changes are below.

Comment: Some commenters supported the proposed language at § 402.14(g)(4) because it allows other agencies and the public to understand the process, and the expectations, when biological opinions are being developed.

Response: The Services agree that the proposed language at § 402.14(g)(4) will

clarify and support gains in efficiencies in the section 7 consultation process.

Comment: Commenters stated that § 402.14(g) does not explain the meaning of the phrase ''current status of the listed species or critical habitat'' in relationship to how we assess jeopardy and destruction/adverse modification of critical habitat.

Response: The adopted regulations are not intended to change the manner in which the Services use the status of the listed species or critical habitat when completing its jeopardy and destruction/adverse modification analyses. Further discussion on how we use the current status of listed species and critical habitat can be found in the Services' 1998 Consultation Handbook, especially Chapter 4—Formal Consultation.

Comment: One commenter urges the Services to clarify that the final rule does not require any increase in the level of detail provided in the initiation package.

Response: The Services' adopted regulatory text at § 402.14(c)(1) clarifies what type of information is necessary to initiate the formal consultation process. Although we have added language to describe the level of detail needed to initiate consultation, this level of detail has not changed from the expectations of the preceding § 402.14(c) regulations and should be commensurate with the scope of the proposed action and the effects of the action.

Comment: One commenter suggested that § 402.14(g) should include consideration and deference to tribal management plans to protect listed species.

Response: Consistent with Secretarial Order 3206, including Appendix Section 3(c), the Services provide timely notification to affected tribes when the Services are aware that a proposed Federal agency action subject to formal consultation may affect tribal interests. Among other things, the Services facilitate the use of the best scientific and commercial data available by soliciting information, traditional knowledge, and comments from, and utilize the expertise of, affected Tribes. The Services also encourage the Federal agency to involve affected Tribes in the consultation process, which may involve consideration of tribal management plans to protect listed species and to consider such plans in the formulation of reasonable and prudent alternatives.

Comment: One commenter believed that § 402.14(g)(4) should be clarified to reflect that it is the responsibility of a project proponent under section 7(a)(2) of the Act to avoid or offset prohibited effects associated with the incremental impact of the proposed action that is the subject of consultation.

Response: Section 402.14(g)(4) describes the final step in the Services' analytical approach in evaluating a proposed action. Requiring every proposed action to avoid or offset the incremental impact of the proposed action would be inconsistent with the applicable standards for determining jeopardy and destruction or adverse modification under the Act.

Clarifications to § 402.14(g)(8) Regarding Whether and How the Service Should Consider Measures Included in a Proposed Action That Are Intended To Avoid, Minimize, or Offset Adverse Effects to Listed Species or Critical Habitat

We proposed clarifications to § 402.14(g)(8) regarding whether and how the Services should consider measures included in a proposed action that are intended to avoid, minimize, or offset adverse effects to listed species or critical habitat. Federal agencies often include these types of measures as part of the proposed action. However, the Services' reliance on a Federal agency's commitment that the measures will actually occur as proposed has been repeatedly questioned in court. The resulting judicial decisions have created confusion regarding what level of certainty is required to demonstrate that a measure will in fact be implemented before the Services can consider it in a biological opinion. In particular, the Ninth Circuit has held that even an expressed sincere commitment by a Federal agency or applicant to implement future improvements to benefit a species must be rejected absent ''specific and binding plans'' with ''a clear, definite commitment of resources for future improvements.'' *Nat'l Wildlife Fed'n* v. *Nat'l Marine Fisheries Serv.,* 524 F.3d 917, 935–36 (9th Cir. 2008). To address this issue, we are proceeding with the revisions to § 402.14(g)(8), including the changes described in Discussion of Changes from Proposed Rule, above. We summarize the comments and provide our responses on the changes to § 402.14(g)(8) below.

Comment: Some commenters opposed the changes and recommended that the text be modified in the final rule to specify that the action agency and/or applicant must establish specific plans and/or resource commitments to ensure that the conservation measures are implemented. In their view, if the proponent agency expects credit for proposing beneficial actions, then there must be additional assurance that those actions will take place. Some commenters stated the proposal was irrational and inconsistent with case law, including Ninth Circuit precedent in *Nat'l Wildlife Fed'n* v. *Nat'l Marine Fisheries Serv.,* 524 F.3d 917 (9th Cir. 2008), and will add further confusion to the case law on the issue.

Response: We disagree with the commenters' recommendation to create a heightened standard of documentation, such as requiring binding plans or clear resource commitments, before the Services can consider the effects of measures included in a proposed action to avoid, minimize, or offset adverse effects. The revisions to § 402.14(g)(8) are intended to address situations where a Federal agency includes measures to avoid, minimize, or offset adverse effects to species and/or critical habitat as part of the proposed action they submit to the Services for consultation, or where such measures are included as part of a reasonable and prudent alternative.

Section 7 of the Act places obligations on Federal agencies to insure that 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 critical habitat. A Federal agency fulfils this substantive obligation ''in consultation with'' and ''with the assistance of'' the Services. In situations where an adverse effect to listed species or critical habitat is likely, the consultation with the Services results in a biological opinion that sets forth the Services' opinion detailing how the agency action affects the species or its critical habitat. Ultimately, after the Services render an opinion, the Federal agency must still determine how to proceed with its action in a manner that is consistent with avoiding jeopardy and destruction or adverse modification. Thus, the Act leaves the final responsibility for compliance with section 7(a)(2)'s substantive requirements with the Federal action agencies, not the Services.

Our regulatory revisions are consistent with the statutory scheme by recognizing that the Federal agencies authorizing, funding, and carrying out the action are in the best position to determine whether measures they propose to undertake, or adopt as part of a reasonable and prudent alternative, are sufficiently certain to occur. Put simply, if the commitment to implement a measure is clearly presented to the Services as part of the proposed action consistent with § 402.14(c)(1), then the Services will provide our opinion on the effects of the action if implemented as proposed.

We do not interpret the statutory phrases ''in consultation with'' and ''with the assistance of'' to require the Services to ignore beneficial effects of measures included in the proposed action to avoid, minimize, or offset adverse effects unless action agencies meet some heightened bar of documentation regarding their commitment. To the contrary, we interpret the Act as requiring the Services to consider the effects of the proposed action in its entirety, including aspects of the proposed action with adverse or beneficial effects.

Some courts have inappropriately conflated the Services' role with that of the action agency by concluding the Services cannot lawfully consider measures proposed to avoid, minimize, or offset adverse effects unless we second guess the intent and veracity of an action agency's commitments. The resulting case law has led to confusion. For instance, the Ninth Circuit has held that even an expressed sincere commitment by a Federal agency or applicant to implement future improvements to benefit a species must be rejected absent ''specific and binding plans'' with ''a clear, definite commitment of resources for future improvements.'' *Nat'l Wildlife Fed'n* v. *Nat'l Marine Fisheries Serv.,* 524 F.3d 917, 935–36 (9th Cir. 2008). More recently the Ninth Circuit held that its ''precedents require an agency to identify and guarantee'' measures to avoid, minimize, or offset adverse effects only to the extent the measures ''target certain or existing negative effects'' of the proposed action. *Defs. of Wildlife* v. *Zinke,* 856 F.3d 1248, 1258 (9th Cir. 2017). In some cases, courts have also stated that ''mitigation measures supporting a biological opinion's no-jeopardy conclusion must be 'reasonably specific, certain to occur, and capable of implementation; they must be subject to deadlines or otherwise-enforceable obligations; and most important, they must address the threats to the species in a way that satisfies the jeopardy and adverse modification standards.' *Ctr. for Biological Diversity* v. *Rumsfeld,* 198 F.Supp.2d 1139, 1152 (D.Ariz. 2002) (citing *Sierra Club* v. *Marsh,* 816 F.2d 1376 (9th Cir. 1987)).'' *Klamath-Siskiyou Wildlands Ctr.* v. *Nat'l Oceanic & Atmospheric Admin.,* 99 F. Supp. 3d 1033, 1055 (N.D. Cal. 2015). However, the Ninth Circuit has also indicated that the question of whether measures to avoid, minimize, or offset adverse effects are sufficiently enforceable turns on whether or not the measures are included in the proposed action, concluding that ''[i]f [the measures] are part of the project design, the [Act]'s sequential, interlocking procedural provisions ensure recourse if the parties do not honor or enforce the agreement, and so ensure the protection of listed species.'' *Ctr. for Biological Diversity* v. *U.S. Bureau of Land Mgmt.,* 698 F.3d 1101, 1115 (9th Cir. 2012). We disagree with the commenter that the regulatory revisions to § 402.14(g)(8) will add to the confusion of the current case law on the subject. Instead, we believe it will resolve confusion by explaining our interpretation of the statute.

The regulatory change to § 402.14(g)(8) is to make it clear that, just like aspects of the proposed action with adverse effects, the Services are not required to obtain binding plans or other such documentation prior to being able to lawfully evaluate the effects of an action as proposed, including any measures included in the proposed action that would avoid, minimize, or offset adverse effects. However, the Services are also moving forward with revisions to § 402.14(c)(1). Those revisions require a Federal agency seeking to initiate formal consultation to provide a description of the proposed action, including any measures intended to avoid, minimize, or offset effects of the proposed action. If the description of proposed measures fails to include the level of detail necessary for the Services to understand the action and evaluate its effects to listed species or critical habitat, then the Services will be unable to take into account those effects when developing our biological opinion. To avoid confusion and reinforce that an appropriate level of specificity regarding the description of measures included in the proposed action may be necessary to provide sufficient detail to assess the effects of the action on listed species and critical habitat, the Services eliminated the reference to ''specific'' plans in our final revisions to § 402.14(g)(8). The Services do not intend to hold these actions to either a higher or lower standard than any other type of action or measure proposed by a Federal agency. Any type of action proposed by a Federal agency receives a presumption that it will occur, but it must also be described in sufficient detail that the Services can both understand the action and evaluate its adverse effects and beneficial effects.

The Services also retain the discretion to advise Federal agencies about all aspects of measures proposed to avoid, minimize, or offset adverse effects to assist them in making an informed determination regarding compliance with section 7 and to assist in achieving the greatest conservation benefit. Moreover, the Services retain the discretion to develop reasonable and prudent measures and associated terms and conditions related to implementation of the proposed action, including the proposed conservation measures, if appropriate (*e.g.,* minimizes the impact of the incidental take and is consistent with § 402.14(i)(2)). Therefore, the revisions to § 402.14(g)(8) in this final rule do not undermine the Services' ability to provide consultation and assistance to Federal agencies related to measures proposed to avoid, minimize, or offset adverse effects. Rather, the revisions merely clarify that Federal agencies seeking to engage in section 7 consultation with the Services are in the best position to define the action being proposed and ultimately comply with section 7's substantive mandate to avoid jeopardy and destruction or adverse modification.

Comment: Some commenters stated that there are examples of projects where resource impacts occurred, but that years later, measures to offset those adverse effects had not been implemented. According to some commenters, history provides numerous examples of action agencies (or the Services themselves in the development of reasonable and prudent alternatives): (1) Promising more than they could deliver in order to alleviate the harmful effects of a proposed action; and/or (2) making optimistic assumptions about the efficacy of the measures that fall far short of what's needed to avoid jeopardy. Therefore, some commenters believed the Services should require that all measures proposed to avoid, minimize, or offset adverse effects demonstrate clear and binding plans with financial assurances.

Response: As described above, the regulatory revisions in § 402.14(g)(8) are consistent with the statutory text and retain the Federal action agencies' substantive duty to insure that their actions are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of designated critical habitat. An action agency that fails to implement the measures proposed to avoid, minimize, or offset adverse effects risks violating the substantive provisions of the Act, engaging in conduct prohibited by section 9, and increasing its vulnerability to enforcement action by the Services or citizen suits under section 11(g) of the Act. This is particularly true if reinitiation of consultation was required based on the failure to implement a proposed measure and the Federal agency fails to reinitiate consultation. For instance, our regulations at § 402.16

require reinitiation of consultation if the amount or extent of take specified in the incidental take statement is exceeded, 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, and if the action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in the biological opinion. Failure to implement a measure proposed to avoid, minimize, or offset adverse effects could implicate those reinitiation triggers. Accordingly, we do not believe the revisions will encourage promises of implementing measures to avoid, minimize, or offset adverse effects that are unrealistic or unachievable.

Regarding the potential for overly optimistic assumptions about the efficacy of measures included in the proposed action to avoid, minimize, or offset adverse effects, nothing in this rule alters the requirement under the Act to use the best scientific and commercial data available when the Services evaluate the effects of a proposed action, including measures proposed to avoid, minimize, or offset adverse effects. This rule also requires Federal agencies to submit information about the measures being proposed to avoid, minimize, or offset adverse effects (§ 402.14(c)(1)) at a level of detail sufficient for the Services to understand the action and evaluate the effects of the action. Thus, we anticipate that, if anything, this rule will improve the availability and quality of information that the Services can use to evaluate the efficacy of proposed actions, including measures proposed to avoid, minimize, or offset adverse effects.

Comment: Some commenters stated support for the proposed changes and said the proposed text would incentivize Federal agencies and project proponents to develop measures to avoid, minimize, or offset adverse effects and may result in greater conservation. Other commenters noted that the applicant and Federal action agency are in the best position to determine the scope of the proposed action and what avoidance, minimization, or other measures can be implemented during the duration of the project, and those measures will be supported by the ''best scientific and commercial data available.'' Some commenters agreed that the proposed changes help to clarify that the Services are not required seek ''binding'' plans or a clear and definite commitment of resources before measures included in a proposed action can be considered by the Services.

Response: The Services appreciate the comments. We believe the regulatory changes will, under certain circumstances, encourage Federal agencies and applicants to commit to implementing measures intended to avoid, minimize, or offset adverse effects. We also agree that the applicant and Federal action agency are in the best position to evaluate what commitments can be made as part of the proposed action. Section 7 consultations will continue to be based upon the best scientific and commercial data available.

Comment: Some commenters asserted that the Services should require specific steps of Federal agencies before considering the effects of measures proposed to avoid, minimize, or offset adverse effects, including: (1) Having those actions included in the actual project description in NEPA documents or the biological assessment; (2) having the Federal agency determine the actions are within their authority; (3) requiring signed agreements between the agency and other cooperators if there is off-site restoration; and (4) having a reinitiation of consultation clause if the actions are not implemented. Other commenters felt that the Services should determine that the plan to avoid, minimize or offset the effects of a proposed action is credible, that the plan for funding such measures is reasonable, and that there are no known obstacles that may keep the measures from being carried out. Some stated that measures to offset adverse effects should outline the amount and type of measures that will be carried out and what mechanism will be used to satisfy the commitment (*e.g.,* conservation bank). If applicants will be undertaking the measure directly, one commenter believed the Services should approve the final plan, and it should be attached or included by reference. One commenter also stated that all plans should take into account established agency guidance on the use of conservation banks and offsetting losses of aquatic resources.

Response: We decline to alter our proposed regulatory text in the manner suggested on these issues for a variety of reasons. First, this rule modifies § 402.14(c) to require information about measures included in a proposed action to avoid, minimize, or offset adverse effects as a prerequisite to initiating formal consultation. Therefore, there is no need to specify that the description of those measures also be included in the project design description in a NEPA document or biological assessment, although we anticipate such measures would also be described in those documents. Similarly, the information required by § 402.14(c) will be sufficient to address the commenter's point about needing information about the type, amount, and mechanisms by which measures will be carried out. In our experience, a Federal agency also would not include a measure as part of its proposed action if it lacked authority to do so, and we do not need additional regulatory provisions to address that concern. Regarding signed agreements with cooperators if off-site measures are involved, the Federal agency proposing the action is responsible for determining the appropriate nature and timing of agreements with cooperators. Finally, our regulations already specify the triggers for reinitiation. Those triggers are adequate to require reinitiation in circumstances where measures are not implemented as proposed and where the failure to implement would alter the effects to listed species or critical habitat. As described elsewhere in our responses to comments, the Services decline to add additional steps, such as the need for a Service-approved plan or additional documentation prior to the Services' evaluation of the action as proposed. We acknowledge agency guidance on measures intended to avoid, minimize, or offset adverse effects can be useful for numerous reasons and could help inform a Federal agency or applicant regarding best practices for ensuring the success of proposed measures, but we decline to require the use of specific agency guidance on measures to avoid, minimize, or offset adverse effects, which can vary over time.

Comment: Some commenters were concerned that the Services have few resources dedicated to compliance monitoring and that a Federal agency's failure to complete the action as proposed cannot adequately be considered through reinitiation of consultation. Reinitiation would not ensure that implementation of the action up until the point at which the agency determines it will not implement a measure avoids jeopardy. The second option mentioned, complying with an incidental take statement, would provide no assurance that the measure is implemented, unless it is actually included as a reasonable and prudent measure as part of the incidental take statement. Another commenter stated the proposal in essence means the Services are not required to police the Federal agency, which could provoke conflict among and between the Services and agencies and require the expenditure of additional resources by agencies apart from the Service.

Response: Nothing in this final rule reduces the Services' resources available for compliance monitoring or reduces the Services' ability to require monitoring and reporting requirements as part of an incidental take statement. The Services regularly impose monitoring and implementation reporting requirements to validate that the effects of a proposed action are consistent with what was analyzed in the biological opinion, and we intend for that practice to continue. Therefore, the final rule will not interject new elements that might provoke conflict among and between the Services and Federal agencies.

As described above, an action agency that fails to implement the measures proposed to avoid, minimize, or offset adverse effects risks violating the substantive provisions of the Act, engaging in conduct prohibited by section 9, and increasing its vulnerability to enforcement action by the Services or citizen suits under section 11(g) of the Act. This is particularly true if reinitiation of consultation was required based on the failure to implement a proposed measure and the Federal agency fails to reinitiate consultation.

We disagree with the commenter that reinitiation of consultation fails to ensure that implementation of the action avoids jeopardy up until the point at which the agency determines it will be unable to implement a measure intended to avoid, minimize, or offset adverse effects. When the Services consider the effects of proposed actions on listed species and critical habitat, that process includes a consideration of the timing and scope of activities that will be implemented. If a proposed action later changes due to measures not being carried out, the adverse effects up until that point must still avoid jeopardy and destruction or adverse modification. Therefore, we believe reinitiation is an appropriate response in the event an action is subsequently modified in a manner that has effects to species or critical habitat that were not previously considered. Once consultation is reinitiated, an action agency must not make irreversible or irretrievable commitments of resources that will foreclose the formulation of reasonable and prudent alternatives, and the substantive duty to avoid jeopardizing listed species and destroying or adversely modifying critical habitat remains. If adverse effects have occurred, those will be taken into account in the reinitiated consultation and the formulation of reasonable and prudent alternatives if necessary. Given the action agencies' substantive obligations under section 7, we do not anticipate our proposed changes to § 402.14(g)(8) will result in measures intended to avoid, minimize, or offset adverse effects being proposed with deceptive intentions.

With regard to the incidental take statement, the Services must make a determination on what reasonable and prudent measures are necessary or appropriate to minimize the impact of take on a case-by-case basis. It would be inappropriate to determine what reasonable and prudent measures and implementing terms and conditions are necessary or appropriate, including reporting requirements to monitor progress, before the Services evaluate the effects of a particular proposed action.

Comment: One commenter stated that if the Services are not required to obtain proof of ''specific and binding plans'' for implementation of minimization measures it would undermine the credibility of effects determinations and complicate the identification of the environmental baseline in future consultations, to the potential disadvantage of future project proponents. Other commenters felt that as a result of this proposed change, there will likely be situations in which the Services make decisions about the adverse impacts of an agency action based on incomplete information with no assurance the beneficial action will occur or create any benefit to species or habitat to offset adverse impacts.

Response: We disagree that the regulatory revisions will undermine the credibility of effects determinations. These regulations do not alter the requirement for Federal agencies and the Services to use the best scientific and commercial data available. As described above, the information needed to initiate consultation now includes a requirement to describe any measures included to avoid, minimize, or offset adverse effects. Thus, the Services will not be evaluating the effects of proposed actions with insufficient information. We do not interpret the Act as requiring a heightened standard of assurances, beyond a sincere commitment and inclusion of a proposed measure as part of the action under consultation, before the Services can lawfully evaluate the effects of the action.

The revisions to § 402.14(g)(8) also will not complicate the identification of the environmental baseline to the disadvantage of future project proponents. The relevant portions of the environmental baseline definition are unchanged in this final rule and will continue to take into account the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process. In any circumstance where a proposed action is subsequently modified and results in effects not previously considered, reinitiation of consultation would likely be required and would be accounted for in the environmental baseline of future consultations as appropriate.

Comment: One commenter remained concerned that, even with the proposed clarification, the Services may continue to exclude from consideration conservation measures that are funded by the applicant but undertaken by another entity or conducted by a related party. The commenter therefore requested that the proposed regulatory text in 50 CFR 402.14(g)(8) be further modified to state that ''. . . the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions as proposed, or taken, funded or otherwise sponsored by the Federal agency, applicant, or related party, including any actions taken prior to the initiation of consultation. Measures included in the proposed action or a reasonable and prudent alternative that are intended to avoid, minimize, or offset the effects of an action are considered like other portions of the action regardless of their geographic proximity to the proposed action, and do not require any additional demonstration of specific binding plans or a clear, definite commitment of resources.''

Response: We appreciate the comment but decline to adopt regulatory language that would categorically expand the scope of beneficial actions due ''appropriate consideration'' under § 402.14(g)(8) to include actions by ''related parties.'' Such a regulatory change is unnecessary. Beneficial actions taken or proposed in consultation by any entity are considered by the Services when developing its biological opinion by being included in the environmental baseline, cumulative effects, or the effects of the action under consultation, as appropriate.

We also decline to categorically include revisions that would expand the scope of measures that would be ''considered like other portions of the action'' to include those actions ''regardless of their geographic

proximity to the proposed action.'' If a proposed measure is not within the geographic proximity of the other components of the proposed action, but would nonetheless have effects to listed species or critical habitat, then the action area would include the area affected by the proposed offsite measures and the effects to listed species and critical habitat would be considered during consultation to the extent they are relevant. No regulatory change is needed for that to occur.

In addition, from a critical habitat perspective, insertion of the phrase ''regardless of their geographic proximity to the proposed action'' would be inappropriate because measures implemented outside critical habitat would often not offset the effects of the Federal action on that critical habitat. This is because critical habitat is a specifically designated area that identifies those areas of habitat believed to be essential to the species' conservation.

Comment: One commenter stated concerns about requiring the information necessary to initiate formal consultation to include ''the specific components of the action and how they will be carried out.'' With respect to beneficial actions, this provision is likely too restrictive.

Response: We appreciate the commenter's concern but decline to alter the scope of information necessary to initial formal consultation pursuant to § 402.14(c)(1). We continue to acknowledge, like we stated in the proposed rule, that there may be situations where a Federal agency may propose a suite or program of measures that will be implemented over time. The future components of the proposed action often have some uncertainty with regard to the specific details of projects that will be implemented. Nevertheless, a Federal agency or applicant may be fully capable of committing to specific levels and types of actions (*e.g.,* habitat restoration) and specific populations or species that will be the focus of the effort. If the Federal agency provides information in sufficient detail for the Services to meaningfully evaluate the effects of measures proposed to avoid, minimize, or offset adverse effects, the Services will consider the effects of the proposed measures as part of the action during a consultation. We believe the information requirements contained in § 402.14(c)(1) will help provide the necessary detail to evaluate the effects of measures proposed to avoid, minimize, or offset adverse effects.

Comment: Some commenters stated that the Act requires all Federal agencies to ''insure'' their actions will avoid jeopardy and destruction or adverse modification of critical habitat. Mere promises of future benefits to species and their habitat in order to offset present adverse impacts does not meet this ''insure'' standard, which Congress characterized as the ''institutionalization of caution.''

Response: As described in the responses to comments above, this final rule does not alter the obligation for Federal agencies to ''insure'' their actions are not likely to jeopardize listed species or destroy or adversely modify critical habitat. The Services will continue to consult with, and provide assistance to, Federal agencies in their compliance with their requirements under section 7, but the Services are not required by the Act to obtain a specific demonstration of the binding nature of a Federal agencies' commitments prior to evaluating the effect of those commitments and providing our biological opinion. If a measure proposed to avoid, minimize, or offset adverse effects is essential for avoiding jeopardy or destruction or adverse modification, then implementation of that measure must occur at a time when the biological benefits to the species and/or habitat are occurring in a temporal sequence such that adverse effects cannot first result in jeopardy, but then subsequently be remediated to avoid jeopardy. Accordingly, the Services do not rely on promises of future actions to offset present adverse effects in a manner that would be inconsistent with Federal agencies ensuring that their actions are consistent with the substantive requirements of section 7.

Comment: One commenter stated the proposed change is a confusing false equivalency that reduces the ability of the Services to evaluate the likely impact of the action by obscuring whether measures will in fact take place. A preferable alternative would be to clarify, when some action ambiguity is warranted, that consultation can still be completed as long as avoidance, minimization, and offsetting commitments are made for each contingency.

Response: We disagree that allowing for ambiguity and creating alternative contingency requirements is a preferable way for the Services to evaluate the effects of a proposed action. We consult on the action as proposed by the Federal agency and will only consider the effects of measures intended to avoid, minimize, or offset adverse effects if presented with sufficient information to meaningfully evaluate the effects of the action.

Comment: One commenter stated that measures to avoid, minimize, or offset adverse effects impose additional costs and burdens on an agency or applicant undertaking a project. Whereas the project proponent wants to engage in the main action, it is undertaking the other measures only to avoid a jeopardy conclusion for the main action. In the commenter's view, the Services cannot rationally ignore this plain difference in the motivations for the main action and those intended to offset the harms of that action.

Response: If a Federal agency or applicant proposes measures to avoid, minimize, or offset adverse effects as part of its proposed action because it is necessary to avoid jeopardy, we believe the motivations for undertaking the measure, such as the need to avoid violations of the Act, are clear. We decline to probe the subjective motivations and second guess the commitments contained in an action under consultation, because doing so is unnecessary to fulfill the Services' role under the Act.

Comment: One commenter stated the Services' proposed changes would render the Services unable to even raise concerns about the likelihood of implementation of beneficial effects of measures proposed to avoid, minimize, or offset adverse effects when they evaluate a proposed action to determine whether it will jeopardize the continued existence of a species or destroy or adversely modify critical habitat. Some commenters asserted the proposed rule provides the ''benefit of the doubt'' to Federal action agencies' promises to implement beneficial measures as part of the action and creates an irrational double standard for evaluating the effects of the action such that Federal beneficial proposals enjoy a favorable presumption in the Services' analysis, but harmful effects and activities must meet a more rigorous test before they will be considered.

Response: We disagree that the changes would render the Services unable to raise concerns with Federal agencies with respect to measures proposed to avoid, minimize, or offset adverse effects. As described above, the Services retain the discretion to advise Federal agencies about all aspects of their proposed action to assist them in making an informed determination regarding compliance with section 7 and in achieving the greatest conservation benefit. However, the Federal agency is ultimately responsible for describing its proposed action and providing the information required by § 402.14(c)(1). If the Federal agency provides information in sufficient detail

for the Services to meaningfully evaluate the effects of measures proposed to avoid, minimize, or offset adverse effects, the Services will consider the effects of the proposed measures during a consultation. Once consultation is initiated, the Services apply the same definition of ''effects of the action'' adopted in this final rule both to the portions of the action with adverse effects and those portions of the proposed action intended to avoid, minimize, or offset adverse effects. Accordingly, the Services will evaluate all consequences of all portions of the proposed action that would not occur ''but for'' the proposed action and are reasonably certain to occur as effects of the action. Therefore, the changes to § 402.14(g)(8) do not create an irrational double standard. To the contrary, the changes eliminate a double standard such that all aspects of the proposed action are treated the same by assuming the action will be implemented as proposed in its entirety. In other words, the proposed avoidance, minimization or offsetting measures will not be forced to meet a heightened threshold but will instead be held to the same standard as the portions of the proposed action likely to result in adverse effects.

We disagree that the changes adopted in this final rule are inconsistent with the Act because they fail to provide the ''benefit of the doubt to the species.'' That phrase originated in a Conference Report that accompanied the 1979 amendments to the Act. Relevant to section 7, those amendments changed the statutory text at section 7(a)(2) from ''will not jeopardize'' to the current wording of ''is not likely to jeopardize.'' The Conference Report explained that the change in the statutory language was necessary to prevent the Services from having to issue jeopardy determinations whenever an action agency could not ''guarantee with certainty'' that their action would not jeopardize listed species. The Conference Report sought to explain that this change in language would not have a negative impact on species: ''This language continues to give the benefit of the doubt to the species, and it would continue to place the burden on the action agency to demonstrate to the consulting agency that its action will not violate Section 7(a)(2).'' H. Conf. Rep. No. 96–697, 96th Cong., 1st. Sess. 12, reprinted in [1979] U.S. Code Cong. & Ad. News, 2572, 2576. The use of the words ''benefit of the doubt to the species'' in the Conference Report appears intended to provide reassurance that the statutory language, as amended, would remain protective of the species. At most, the language seems to indicate that the statutory language ''is not likely to jeopardize'' continues to provide protections to listed species by requiring action agencies to insure that their actions are not likely to jeopardize listed species. We do not believe that the Conference Report language or the Act requires the Services to establish a more demanding standard of documentation to demonstrate that measures included in a proposed action to avoid, minimize, or offset adverse effects will in fact be implemented. This rule does not change any statutory requirements found in section 7(a)(2) of the Act, and the Services will continue to utilize the best scientific and commercial data available when evaluating the efficacy of measures proposed to avoid, minimize, or offset adverse effects.

Comment: One commenter stated that, if the determination that an action's impacts will not jeopardize a species relies on the implementation of conservation measures, those measures must be planned and funded.

Response: We agree that if the Services determine that a measure intended to avoid, minimize, or offset adverse effects is necessary to avoid jeopardy, then it is critical for the measure to be achievable and be carried out if the adverse effects of the action are also occurring. Ultimately, however, the Federal agency proposing to take the action is in the best position to determine what planning and funding is necessary to ensure that their substantive duties under section 7 are satisfied. As discussed above, the Services retain the discretion during consultation to assist the action agencies in developing or improving the effectiveness of measures proposed to avoid, minimize, or offset adverse effects and ensuring the greatest chance of success. Moreover, the Services retain the discretion to develop reasonable and prudent alternatives or reasonable and prudent measures and associated terms and conditions if doing so would be appropriate.

Section 402.14(h)—Biological Opinions

We proposed to add new paragraphs (h)(3) and (4) to the current § 402.14(h) to allow the Services to adopt all or part of a Federal agency's initiation package in its biological opinion. Additionally, we proposed to allow the Services to adopt all or part of their own analyses and findings that are required to issue a permit under section 10(a) of the Act in its biological opinion. We are proceeding with those proposed changes, as well as the changes described under Discussion of Changes from Proposed Rule above. We summarize the comments and provide our responses on this topic below related to revisions to § 402.14(h) below.

Comment: We received numerous comments supporting the ability of the Services to adopt various internal or other Federal agency documents including their initiation package or the documents associated with the Services' section 10 documents because they believe this proposal would avoid unnecessary duplication of documents, streamline the consultation process, and codify existing practice. Other commenters were supportive but also recommended that an applicant's documents prepared pursuant to section 10 of the Act and tribal documents should be able to be adopted in the Service's biological opinion.

Response: We believe that this proposal will codify existing practice and further encourage a collaborative process between the Services, Federal agencies, and applicants that will streamline the consultation process by eliminating duplication of analyses or documents whenever appropriate. We agree with commenters that appropriate analyses and documents from both tribes (*e.g.,* tribal wildlife management plans or resource management plan) and applicants' section 10 Habitat Conservation Plans are eligible for adoption by the Services into their biological opinion.

Comment: Some commenters raised concern that adopting section 10 Habitat Conservation Plan analyses or documents was inappropriate because there are different standards in the two sections of the Act.

Response: The intent of the proposed rule is to provide flexibility to adopt in a biological opinion, after appropriate review, relevant parts of internal analyses or documents prepared to support issuance of a section 10 permit. This could include the project description, site-specific species information and environmental baseline data, proposed conservation measures, analyses of effects, etc., all of which may be appropriate for use in Service determinations pursuant to both sections 7 and 10 of the Act.

Comment: Several commenters were critical of the proposed rule, asserting that adoption of non-Service analyses or documents in a biological opinion would be an abdication of our responsibilities to conduct independent, science-based analyses and that only the Services possessed the requisite expertise to perform these analyses.

Response: The Services' proposal is not to indiscriminately adopt analyses or documents from non-Service sources, but to adopt these analyses only after

our independent, science-based evaluation of existing analyses or documents that meet our regulatory and scientific standards. The intent is to avoid needless duplication of analyses and documents that meet our standards, including the use of the best scientific and commercial data available. In some situations, the analyses or documents may need to be revised to merit inclusion in our biological opinions, but even those situations will make the consultation process more efficient and streamlined. For example, it is a common practice for the Services to adopt portions of biological assessments and initiation packages in their biological opinions. The codification of this practice creates a more collaborative process and incentive for Federal agencies and section 10 applicants to produce high-quality analyses and documents that are suitable for inclusion in biological opinions, which streamlines the timeframe for completion of the consultation process.

Comment: One commenter expressed concern that the proposed adoption process might shift the burden to the Federal agency and extend the timeline for completion of consultation.

Response: The Services disagree. Federal agencies currently have the responsibility under § 402.14(c) to provide the information required to initiate consultation and to use the best scientific and commercial data available. The adoption process does not affect that responsibility. The Services' adoption of internal and non-Service analyses and documents is intended to streamline and reduce the overall consultation timeline.

Section 402.14(l)—Expedited Consultation

We proposed to add a new provision titled ''Expedited consultations'' at § 402.14(l) to offer opportunities to streamline consultation, particularly for actions that have minimal adverse effects or predictable effects based on previous consultation experience. We adopt the new § 402.14(l) in this final rule and summarize the comments received and our responses below.

Comment: Several commenters supported the proposed process for expedited consultations as it would promote conservation and recovery, increase efficiencies, reduce permitting delays, and generally streamline the consultation process.

Response: The Services agree with these comments that the proposed expedited consultation provision will benefit species and habitats by promoting conservation and recovery through improved efficiencies in the section 7 consultation process.

Comment: Several commenters were concerned that consultations undergoing the expedited process would have reduced oversight and not allow for a thorough analysis of the potential effects of a Federal agency's proposed action and therefore may not meet the standards required under section 7(a)(2) of the Act. Another commenter indicated that the proposed expedited consultation process could provide some benefits. However, the commenter raised concerns that the ability to evaluate a project on a specific basis would be missed, and this provision would open the door for blanket permissions to proceed on particular projects that could be detrimental to species, especially if there are new or specific impacts to species in time and place despite the project being similar to others.

Response: The expedited consultation provision is an optional process that is intended to streamline the consultation process for those projects that have minimal adverse impact but still require a biological opinion and incidental take statement and for projects where the effects are either known or are predictable and unlikely to cause jeopardy or destruction or adverse modification. Many of these projects historically have been completed under the routine formal consultation process and statutory timeframes. This provision is intended to expedite the timelines of the formal consultation process for Federal actions while still requiring the same information and analysis standards as the normal process. Based upon the nature and scope of the projects expected to undergo this expedited process, expedited timelines will still allow for the appropriate level of review and oversight by the Services that meet the standards and requirements of the section 7 consultation process under the Act.

Comment: Several commenters indicated they support this provision for an expedited consultation process. However, they requested additional clarification on when this type of consultation would be appropriate or examples of specific parameters such as time required for a proposed Federal action to undergo this expedited consultation process. A few commenters also asked for clarification on how this process differs from the programmatic consultation process.

Response: A key element for successful implementation of this process is mutual agreement between the Service and Federal agency (and applicant when applicable). The mutual agreement will contain the specific parameters necessary to complete each step of the process, such as the completion of a biological opinion. Discussions between the Service and Federal agency (and applicant when applicable) will identify what projects could undergo this process. An example of an expedited consultation process that has been utilized by Services and land management agencies for many years is the streamlining agreement for western Federal lands (*https://www.fs.fed.us/r6/icbemp/esa/TrainingTools.htm*). The streamlining agreement adopts an interagency team process that frontloads much of the consultation and leads to the issuance of biological opinions within 60 days. The streamlining agreement illustrates the types of efficiencies the Services hope to gain with the adoption of the expedited consultation provision. The expedited consultation provision is an optional process that is intended to streamline the consultation process, similar to other mechanisms such as programmatic consultations. However, this process differs from programmatic consultations primarily because it is expected to be completed entirely in an expedited timeframe resulting from familiarity with the type of project being proposed and its known or predictable effects on species. Additionally, this process may differ from a programmatic consultation in that many programmatic consultations often require lengthy time for technical assistance, agreements on conservation measures, and completion of the biological opinion in the initial phases of the consultation process, with efficiencies and streamlining achieved later on once individual projects are reviewed and appended or covered under the completed programmatic biological opinion. The Services nevertheless anticipate that, if appropriate, a programmatic consultation could proceed under the expedited consultation process.

Comment: A few commenters indicated the proposed revisions for an expedited consultation approach may be unnecessary and unrealistic given current staffing and funding constraints of the Service(s), reducing their ability to meet expedited timelines. Additionally, one of these commenters also was concerned that the proposed changes to the definition of Director could cause additional delays if these types of consultations would all have to be signed at the U.S. Fish and Wildlife Service headquarters in Washington, DC, defeating the purpose of completion

of formal consultation under an expedited timeline.

Response: The Services do not anticipate an increase in constraints on staff or resources. The expedited consultation provision is anticipated to improve efficiencies by reducing the amount of time staff would need to spend completing consultations for projects undergoing this process. By decreasing the amount of time spent on these types of consultations, it is anticipated more staff time and resources would be available for completion of projects undergoing more complex or lengthy consultation processes.

As discussed above, the revision to the definition for Director is intended to designate the head of both FWS and NMFS as the definitional Director under the section 7(a)(2) interagency cooperation regulations. The change does not revise the current signature delegations of the Services in place that allow for signature of specified section 7 documents (*e.g.,* biological opinions and concurrence letters) at the regional level and will not increase the completion time for consultation.

Comment: One commenter recommended that this expedited consultation process only be undertaken for projects that are entirely beneficial to species and habitats.

Response: The Services agree that many projects that are beneficial for species and habitats could undergo an expedited consultation process. Such projects may have some anticipated temporary adverse effects to listed species and their habitat, but often are predictable, and, therefore, these projects could be good candidates for the expedited consultation process. However, the Services do not agree that the expedited consultation provision should be limited to only these types of beneficial actions. Other actions that meet the requirements of the provision could also benefit from an expedited process while still ensuring full compliance with the Act.

Comment: A few commenters opposed the proposed provision for expedited consultations since the Services generally complete consultations within the established statutory deadlines.

Response: The Services strive to complete consultations within the established statutory deadlines, but continue to identify ways to improve efficiencies. The proposed new provision for expedited consultations is another streamlining mechanism intended to improve efficiencies in the section 7(a)(2) consultation process for the Services, Federal agencies, and their applicants while ensuring full compliance with the responsibilities of section 7.

Section 402.16—Reinitiation of Consultation

The Services proposed to revise the title of section 402.16 to remove the term ''formal'' in order to recognize long standing practice between the Services and Federal agencies that reinitiation of section 7(a)(2) consultation also applies to the written concurrences that complete the section 7(a)(2) process under § 402.13 *Informal Consultation.* We are proceeding with that revision to § 402.16 and also further revising the text at § 402.16(c) to clarify the connection of the reinitiation criteria to the written concurrence process. This latter revision is described above in this final rule. We received several comments on this section, and those comments and our responses to the public comment received on the proposal to codify that reinitiation of consultation applies to the informal consultation written concurrence process are here provided.

The Services also proposed to amend § 402.16 to address issues arising under the Ninth Circuit's decision in *Cottonwood Environmental Law Center* v. *U.S. Forest Service,* 789 F.3d 1075 (9th Cir. 20016) *cert. denied,* 137 S. Ct. 293 (2016). We proposed to add a new paragraph (b) to clarify that the duty to reinitiate consultation does not apply to an existing programmatic land plan prepared pursuant to FLPMA, 43 U.S.C. 1701 *et seq.,* or NFMA, 16 U.S.C. 1600 *et seq.,* when a new species is listed or new critical habitat is designated. We proposed to narrow § 402.16 to exclude those two types of plans that have no immediate on-the-ground effects. This exclusion is in contrast to specific on-the-ground actions that implement the plan and that are subject to their own section 7 consultations if those actions may affect listed species or critical habitat. Thus, the proposed regulation also restated our position that, while a completed land management plan prepared pursuant to FLPMA or NFMA does not require reinitiation upon the listing of new species or critical habitat, any on-the-ground subsequent actions taken pursuant to the plan must be subject to a separate section 7 consultation if those actions may affect the newly listed species or newly designated critical habitat.

In addition to seeking comment on the proposed revision to § 402.16, we sought comments on whether to exempt other types of programmatic land or water management plans in addition to those prepared pursuant to FLPMA and NFMA from the requirement to reinitiate consultation when a new species is listed or critical habitat designated. We also requested comment on the proposed revision in light of the recently enacted Wildfire Suppression Funding and Forest Management Activities Act, H.R. 1625, Division O, which was included in the Omnibus Appropriations bill for fiscal year 2018.

Comment: Some commenters agreed that the proposed changes would align our regulations with current practice and court decisions. Some commenters expressed concern that we were expanding the requirements for reinitiation or expanding the circumstances in which reinitiation is required. One commenter suggested we clarify when reinitiation is needed by establishing ''clear standards for determining what project changes warrant a re-evaluation of previously approved environmental documentation (*i.e.,* what constitutes a material change).''

Response: The proposed changes do not alter the requirement that the Federal agency retain discretionary involvement and control for reinitiation to apply. Nor does the proposal change or expand the scope of reinitiation triggers for section 7(a)(2) consultation. A material change relevant to section 7(a)(2) consultations on an action is captured in the reinitiation trigger at § 402.16(c): ''[i]f the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered. . . .'' These standards for reinitiation of consultation are straightforward, and the Services do not plan further clarification in the regulatory text on this point. However, the Services are further revising § 402.16(c) to make clear that this trigger for reinitiation of consultation applies to the written request for concurrence and our response.

Informal consultation is an optional process in which a Federal agency may determine, with the Services' concurrence, that formal consultation is not necessary because the action is not likely to adversely affect listed species and critical habitat. In these cases, the relevant reinitiation triggers still apply to the action as long as the agency retains discretionary involvement or control over the action. For example, if the action is changed or new information reveals effects to listed species or critical habitat may occur in a manner not previously considered, then reinitiation of consultation is warranted. This could occur where a permitted activity proceeds in a manner different than originally proposed, or if

new scientific or commercial information indicates that the permitted activities or effects flowing from those activities have different or greater impacts on the critical habitat or species than originally evaluated during the informal consultation process.

Comment: Several commenters urged the Services to extend the exemption from reinitiation when a new species is listed or critical habitat designated to all programmatic plans, including water management plans, other types of programmatic land management plans such as comprehensive conservation plans prepared for National Wildlife Refuges, and other types of integrated activity plans.

Response: At this time, we have decided to limit only those approved land management plans prepared pursuant to FLPMA or NFMA from reinitiation when a new species is listed or critical habitat designated.

Comment: One commenter was concerned the reinitiation exemption would apply to other U.S. Forest Service (USFS) plans, such as travel management plans.

Response: Only approved USFS programmatic land management plans prepared pursuant to NFMA are temporarily relieved from the reinitiation of consultation when a new species is listed or critical habitat designated. Other types of plans are still subject to reinitiation if one of the triggers is met under § 402.16(a) and the agency retains discretionary authorization or control over the plan.

Comment: Many commenters believed that our proposed regulation is in contravention to controlling case law, including *Cottonwood, Forest Guardians* v. *Forsgren,* 478 F.3d 1149 (10th Cir. 2007), and *Pacific Rivers Council* v. *Thomas,* 30 F. 3d 1050 (9th Cir. 1994). Likewise, a few comments criticized the proposed regulation because the duty to reinitiate derives from the action agency's substantive and procedural duties under section 7, which would be undermined.

Response: We agree that Congress intended to enact a broad definition of ''action'' in the Act. We also agree that management plans may have long-lasting effects; however, those effects were addressed in a consultation when the plan was adopted. Any effects that were not considered in the original consultation may still be subject to reinitiation if certain triggers are met, including whether the agency retains discretionary authorization or control over the action. Any actions taken pursuant to the plan will be subject to its own consultation if it may affect listed species or critical habitat. We disagree with *Cottonwood's* holding that the mere existence of a land management plan is an affirmative discretionary action subject to reinitiation. *See generally Southern Utah Wilderness Alliance* v. *Norton,* 542 U.S. 55 (2004); *see also National Ass'n of Homebuilders* v. *Defenders of Wildlife,* 551 U.S. 644 (2007). This amendment to § 402.16 reaffirms that only affirmative discretionary actions are subject to reinitiation under our regulations when any of the triggers at § 402.16(a)(1) through (4) are met.

Comment: Several commenters believed that the proposed § 402.16(b) violated the Wildlife Suppression Funding and Forest Management Activities Act, H.R. 1625, Division O, which was included in the Omnibus Appropriations bill for fiscal year 2018.

Response: After further review, the Services have revised the final regulation to include timeframes for forest land management plans prepared pursuant to NFMA to align with the temporary relief from reinitiation when a new species is listed or critical habitat designated set forth by Congress in section 208 of the Wildfire Suppression Funding and Forest Management Activities Act included in the 2018 Omnibus bill. In addition, in section 209, Congress excluded those grant lands under the Oregon and California Revested Lands Act, 39 Stat. 218, and the Coos Bay Wagon Road Reconveyed Lands Act, 40 Stat. 1179, from reinitiation of consultation when a new species is listed or critical habitat designated. Congress set no time limit for this exemption. However, a separate consultation must still occur for these particular Bureau of Land Management (BLM) lands for any actions taken pursuant to the plan, with respect to the development of a new land use plan, or the revision or significant change to an existing land use plan. *See* Wildfire Suppression Funding and Forest Management Activities Act at section 209(b).

Congress did not address in the Wildfire Suppression Funding and Forest Management Activities Act other BLM land managed pursuant to FLPMA. Thus, we are exercising our discretion and excluding from reinitiation those programmatic land management plans prepared pursuant to FLPMA when a new species is listed or critical habitat designated, provided that any specific action taken pursuant to the plan is subject to a separate section 7 consultation if the action may affect listed species or critical habitat.

Comment: A few commenters did not want a regulation relieving BLM and the USFS from reinitiation on its land management plans if a new species is listed or critical habitat designated. They believed a case-by-case approach would make more sense, especially when a new listing under the Act might call for significant changes to the plan.

Response: If a new listing or new critical habitat designation would require significant changes to a land management plan, those changes would have to be accomplished through a plan amendment or plan revision. A plan amendment or revision would be a separate action subject to consultation if it may affect listed species or critical habitat.

Comment: Some commenters argued that BLM and the USFS retain sufficient discretionary involvement or control over their land management plans to require reinitiation if certain triggers are met.

Response: The Services may recommend reinitiation of consultation, but it is within the action agency's purview, and not the Services', to determine whether it retains discretionary involvement or control over their plans for purposes of reinitiation.

Comment: A few commenters supported § 406.16(b) because developers of a land management plan should have considered how to manage for healthy ecosystems when the plan was adopted and thus should not always be required to reinitiate consultation. This direction shifts management away from a species-by-species focus and towards healthy landscapes and habitats.

Response: We agree with this approach and note this type of focus is best achieved through a section 7(a)(1) conservation program in consultation with the Services when a new species is listed or critical habitat designated. As we noted in the proposed rule's preamble, this proactive, conservation planning process will enable an action agency to better synchronize its actions and programs with the conservation and recovery needs of listed and proposed species. Such planning can help Federal agencies develop specific, pre-approved design criteria to ensure their actions are consistent with the conservation and recovery needs of the species. Additionally, these section 7(a)(1) programs will facilitate efficient development of the next programmatic section 7(a)(2) consultations when the land management plan is renewed.

Comment: Many commenters expressed concern with the relief from reinitiation provision applying to a forest or land management plan that is out of date. A few suggested that we revise the regulation to require only up-

to-date land management plans be subject to the exemption provided in § 402.16(b) so as to ensure the science and public input are not stale.

Response: As noted in the proposed rule preamble, BLM and the USFS are required to periodically update their land management plans, at which time they would consult on any newly listed species or critical habitat. BLM is required to periodically evaluate and revise its Resource Management Plans (43 CFR part 1610), and reevaluations should not exceed 5 years (*see* BLM Handbook H–1601–1 at p. 34). Our proposed rule anticipated that BLM Resource Management Plans will be kept up to date in accordance with this agency directive and so did not place any limitation on the relief from reinitiation. Our final rule also does not place any limitation on the relief from reinitiation for approved BLM plans. For any BLM land management plan, we note that any separate action taken pursuant to such plans will be subject to a separate consultation, which will take into account effects upon newly listed species and designated critical habitat.

USFS is required to revise their land management plans at least every 15 years (*see* 36 CFR 219.7). Congress, in the Wildfire Suppression Funding and Forest Management Activities Act, limited the relief from reinitiation with respect to plans prepared pursuant to NFMA to only those plans that are up to date, and that Congressional limitation is now also reflected in our revised final regulation.

Comment: A few comments suggested adding text to the regulation not to require reinitiation on the approval of a land management plan when a new species is listed or critical habitat designated ''provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation *limited in scope to the specific action.*'' (emphasis added).

Response: We respectfully decline to add this text because we do not think it is necessary.

Comment: A few commented that § 404.16(b) violates the Services' duty to consider cumulative effects.

Response: We respectfully disagree. Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation. In other words, a land management plan's effects within the action area does not include cumulative effects, but cumulative effects within the action area are taken into account when determining jeopardy or adverse modification.

Comment: One commenter believed the final regulation violates section 7(d) of the Act because failure to reinitiate on a completed land management plan results in the irretrievable commitment of resources in a manner that forecloses reasonable and prudent alternatives to the plan that could avoid jeopardy.

Response: Programmatic land management plans have no immediate-on-the-ground effects. Thus, making a section 7(d) determination on the mere existence of a completed land management plan that is subject to step-down, action-specific consultations does little to further the conservation goals of the Act.

Comment: One comment suggested that ''reinitiation'' does not require the completion of consultation and may not require a ''full-blown'' consultation.

Response: The Services agree that the scope and requirements of a reinitiation of consultation and documents for completion will depend on the particular facts of a given situation. We decline to issue regulations addressing this issue at this time, however. This comment also requested adding text that is already addressed under existing reinitiation triggers.

Comment: One comment suggested that, if the species proposed for listing were already included in the consultation on the programmatic land management plan, such plans should not have to be reinitiated when the species becomes listed.

Response: We agree with this comment. Also, this type of situation also lends itself well to a section 7(a)(1) program. Please see our response above.

Section 402.17—Other Provisions

For responses related to this section, please see response to comments for ''effects of the action'' above.

Miscellaneous

This section captures comments received and our responses for other aspects of the Services' proposed rule.

Comment: In our proposed rule, the Services sought comment regarding revising § 402.03 (applicability) to potentially preclude the need to consult under certain circumstances. We described this as ''. . . when the Federal agency does not anticipate take and the proposed action will: (1) Not affect listed species or critical habitat; or (2) have effects that are manifested through global processes and (i) cannot be reliably predicted or measured at the scale of a listed species' current range, or (ii) would result at most in an extremely small and insignificant impact on a listed species or critical habitat, or (iii) are such that the potential risk of harm to a listed species or critical habitat is remote, or (3) result in effects to listed species or critical habitat that are either wholly beneficial or are not capable of being measured or detected in a manner that permits meaningful evaluation.''

Response: The Services appreciate the wide variety of thoughtful comments and suggestions we received on these concepts. While many commenters supported the potential revisions, many did not. Though not an exhaustive list, the majority of the comments covered topics such as a belief that the concepts would streamline the consultation process and allow more time for consultation on projects with greater harm and risk to listed species, potential legal risks to action agencies if we were to revise the regulations to address these circumstances, unclear legal authority to adopt such regulations, concern regarding reduced opportunity for cooperation between the Services and Federal agencies, lack of adequate expertise in Federal agencies to correctly make the needed determinations, delays in consultation completion, complication of the consultation process, and failure to examine larger environmental phenomena. While such input may inform the future development of additional regulatory amendments, policies, or guidance, we have determined at this time, in the interests of efficiency, to defer action on this issue, which we may address at a later time. Because the Services are required only to respond to those ''comments which, if true, . . . would require a change in [the] proposed rule,'' *Am. Mining Cong.* v. *United States EPA,* 907 F.2d 1179, 1188 (D.C. Cir. 1990) (quoting *ACLU* v. *FCC,* 823 F.2d 1554, 1581 (D.C. Cir. 1987)), those that were not specifically addressed in our proposed regulatory amendments are not ''significant'' in context of the proposed rule. *See also Home Box Office, Inc.* v. *FCC,* 567 F.2d 9, 35 n. 58 (D.C. Cir. 1977), *cert. denied,* 485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988). Therefore, we will not respond further to these comments at this time.

Comment: We received many comments related to topics that were not specifically addressed in our proposed regulatory amendments, such as defining or revising definitions, clarifying emergency consultation, including economic considerations into the consultation process, revising the 1998 Consultation Handbook, and

revising the regulations implementing other sections of the Act.

Response: The Services appreciate the many insightful comments and suggestions we received on section 7 and the consultation process. While such input may inform the future development of additional regulatory amendments, policies, or guidance, we have determined at this time, in the interests of efficiency, to go forward with the scope of the originally proposed regulatory revisions and defer action on other issues until a later time. Because the Services are required only to respond to those ''comments which, if true, . . . would require a change in [the] proposed rule,'' *Am. Mining Cong.* v. *United States EPA,* 907 F.2d 1179, 1188 (D.C. Cir. 1990) (quoting *ACLU* v. *FCC,* 823 F.2d 1554, 1581 (D.C. Cir. 1987)), those that were not specifically addressed in our proposed regulatory amendments are not ''significant'' in context of the proposed rule. *See also Home Box Office, Inc.* v. *FCC,* 567 F.2d 9, 35 n. 58 (D.C. Cir. 1977), *cert. denied,* 485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988). Therefore, we will not respond to these ''miscellaneous'' comments at this time.

Comment: Several commenters were concerned that the Services effectively failed to provide adequate notice and opportunity for public comment, particularly because the three draft rules were posted simultaneously. Several commenters requested additional time for review, while others asserted we should withdraw our proposal, republish it with a more accurate and clear summary of the changes to the regulations and their implications, and provide further opportunity for public comment.

Response: We provided a 60-day public comment period on the proposed rule. Following publication of our proposed rule, we held numerous webinars providing an opportunity for States, tribes, non-governmental organizations, and industry groups to ask questions and provide input directly to the Services. This satisfies the Services' obligation to provide notice and comment under the Act and the Administrative Procedure Act (APA).

Comment: The Services received several comments that raised concern over whether we would finalize a rule without the opportunity for additional public notice and comment based upon our representation that the rulemaking should be considered as applying to all of part 402 and that we would consider whether additional modifications to the interagency cooperation regulations would improve, clarify, or streamline the administration of the Act.

Response: We did seek public comments recommending, opposing, or providing feedback on specific changes to any provision in part 402. Based upon comments received and our experience in administering the Act, we represented that a final rule may include revisions that are a logical outgrowth of the proposed rule, consistent with the APA. Some believed that these representations would allow us to amend any of part 402 without sufficient public notice in violation of the APA. We reiterate that any final changes to part 402 not specifically proposed would have to be a logical outgrowth of the proposal and fairly apprise interested persons of the issues. The Services have satisfied that standard here with regard to the changes adopted in this final rule compared to the proposed rule. As such, there are no substantial additional revisions that were not part of the proposed rule which would not be considered a logical outgrowth of the proposed rule.

Comment: Some commenters requested a hearing on the proposed rule.

Response: As this is an informal rulemaking under APA section 553, a hearing is not required.

Comment: Several Tribes commented they should have greater involvement in consultations affecting their resources and that traditional ecological knowledge should constitute the best scientific and commercial data available and be used by the Services.

Response: Tribes provide significant benefits to the consultation process. The Services will continue to work with tribes to meet our trust responsibilities and to comply with applicable tribal engagement policies, including Executive Order 13175, Secretarial Order 3206, NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations, and the FWS Native American Policy, as part of the formal consultation process.

Traditional ecological knowledge (TEK) is important and useful information that can inform us as to the status of a species, historical and current trends, and threats that may be acting on it or its habitat. The Act requires that we use the best scientific and commercial data available to inform the section 7(a)(2) consultation process. Although in some cases TEK may be the best data available, the Services cannot determine, as a general rule, that TEK will be the best available data in every circumstance. However, we will consider TEK along with other available data, weighing all data appropriately during our section 7(a)(2) analysis.

National Environmental Policy Act

In the proposed regulation's Required Determinations section, we represented that the Services would analyze the proposed regulation in accordance with criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on implementation of NEPA (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 8), the NOAA Administrative Order 216–6A, and the NOAA Companion Manual, ''Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities,'' which became effective January 13, 2017. We requested public comment on the extent to which the proposed regulation may have a significant impact on the human environment or fall within one of the categorical exclusions for action that have no individual or cumulative effect on the quality of the human environment.

Comment: We received comments arguing that these proposed amendments to the section 7 regulations are significant under NEPA and thus require the preparation of an environmental impact statement or, at least, an environmental analysis. Other commenters believed these amendments qualify for a categorical exclusion (CE) under NEPA.

Response: The Services believe that these rules will improve and clarify interagency consultation without compromising the conservation of listed species. We have not raised or lowered the bar for what is required under the regulations. For the reasons stated in the Required Determinations section of this final rule, we have determined that these amendments, to the extent they would result in foreseeable environmental effects, qualify for a CE from further NEPA review and that no extraordinary circumstances apply.

Comment: Other commenters remarked upon inadequate funding for the Council on Environmental Quality and inefficiencies surrounding the implementation of NEPA.

Response: These comments are outside the scope of these regulations.

Merit, Authority, and Means for the Services To Conduct a Single Consultation, Resulting in a Single Biological Opinion, for Federal Agency Actions Affecting Species That Are Under the Jurisdiction of Both FWS and NMFS

In the proposed rule, we sought comment on ''the merit, authority, and

means for the Services to conduct a single consultation, resulting in a single biological opinion, for Federal agency actions affecting species that are under the jurisdiction of both FWS and NMFS.'' We received a variety of comments in response to our request. Some of them interpreted the Services' request to mean that we were requesting comment on our ability to conduct a joint consultation, resulting in a single biological opinion, when both Services have species that require consultation (*e.g.,* both Services participate in the consultation and then prepare a single biological opinion in which each agency addresses the species for which it has responsibility). One commenter interpreted our request to be that one Service could conduct a consultation and prepare a biological opinion for a species for which the other agency has responsibility (*e.g.,* FWS could consult and prepare a biological opinion for a listed chinook salmon, which is listed under NMFS' authority).

Comment: Some commenters supported the Services conducting a single consultation, resulting in a single biological opinion. Examples of supporting comments include, but are not limited to: Joint consultations and biological opinions could improve the Services' process and outcomes through early collaboration on species under joint jurisdiction; there would be better alignment with the 1998 Consultation Handbook's language regarding coordination, and more consistent interpretation and application of information between the Services. Concerns raised focused on issues such as: The potential for significant delays due to the additional coordination required between the Federal agency and the Services; and the potential for an increased burden on the Federal agency to negotiate consultation schedules with the Services to accommodate a joint consultation, especially when the proposed action is time sensitive. A few commenters proposed process improvements, such as the development of guidance, for when and how the Services conduct joint consultations and prepare joint biological opinions.

Response: The Services acknowledge that there can be challenges with completing joint biological opinions in cases where the Services have joint jurisdiction (*e.g.,* sea turtles), as well as in cases where the species addressed by the two agencies are different but both Services are engaged in consultation on the same project. Joint consultations require additional coordination, which often adds to complexity in scheduling meetings, preparing the biological opinion, etc. However, in some circumstances (*e.g.,* where the Services' respective reasonable and prudent measures and terms and conditions have the potential to contradict one another), the additional coordination can be beneficial. Joint biological opinions are often the most efficient way to implement the Services' authorities and provide clarity to the action agencies and applicants. For these reasons, the decision to conduct a joint biological opinion is best made on a case-by-case basis.

In this rule, we are not proposing any changes to how we conduct joint consultations or prepare joint biological opinions. In a few circumstances (*e.g.,* listed sea turtles), the Services will continue to implement existing Memoranda of Understanding (MOUs) that help define our respective responsibilities. Otherwise, in accordance with our current practices, we will continue to involve the Federal agency and the applicant (working through the Federal agency) in the decision-making process on the need for, and means to, conduct joint consultations and prepare joint biological opinions.

Comment: One commenter suggested that it would be illegal for one Service to conduct a consultation and prepare a biological opinion evaluating effects to a species for which the other agency has responsibility.

Response: The Secretary of the Interior and Secretary of Commerce have specific jurisdictional authority for species listed under the Act that have been assigned to them by Congress. The Act defines ''Secretary'' as ''the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provision of Reorganization Plan Numbered 4 of 1970.''

Reorganization Plan Number 4 (Title 5. Appendix Reorganization Plan No. 4 of 1970, page 208) established the National Oceanic and Atmospheric Administration and Assistant Administrator for Fisheries and transferred certain responsibilities from the Secretary of the Interior to the Secretary of Commerce. Reorganization Plan Number 4 was amended in 1977 to state, ''The Assistant Administrator for Fisheries shall be responsible for all matters related to living marine resources which may arise in connection with the conduct of the functions of the Administration. [As amended Pub. L. 95–219, 3(a)(1), Dec. 28, 1977, 91 Stat. 1613.].''

These regulations do not address the underlying particular circumstance raised by this comment; therefore, we decline to respond to the legal question posed by the commenter.

Role of Applicants and Designated Non-Federal Representatives in Section 7(a)(2) Consultations

Comment: The Services received many comments regarding the role of applicants in the consultation process, including those encouraging an active role for applicants during consultation.

Response: The Services appreciate these comments and agree that applicants play a significant role in the consultation process. The Act, the regulations, and the 1998 Consultation Handbook all provide for a role of an applicant in several stages of the consultation process. With regard to informal consultation, an applicant can act as the non-Federal representative and, under the guidance of the action agency, write any biological evaluations or assessments. With regard to formal consultation, as delineated in the regulations and 1998 Consultation Handbook, an applicant: (1) Is provided an opportunity to submit information through the action agency; (2) must be informed by the action agency of the estimated length of time for an extension for preparing a biological assessment beyond the 180-day timeframe and the reason for the extension; (3) must be provided an explanation if the formal consultation timeframe is extended and must consent to any extension of more than 60 days; (4) may request to review a final draft biological opinion through the Federal agency and provide comments through the Federal agency; (5) have discussions with the Services for the basis of their biological determinations and provide input to the Services for any reasonable and prudent alternatives if necessary; and (6) be provided a copy of the final biological opinion.

Our implementing regulations and 1998 Consultation Handbook assign to the Federal agency the responsibility for determining whether and how an applicant will be engaged in a consultation along with that agency. In order to facilitate involvement from applicants, if any applicant reaches out to the Service, we will notify the Federal agency immediately, advise the Federal agency of the opportunities for applicant involvement in the consultation process provided by the Act, the regulations, and the 1998 Consultation Handbook, and encourage the Federal agency to afford those opportunities to the applicant throughout the consultation process.

Comment: Some commenters requested full participation by

designated non-Federal representatives in the consultation process.

Response: Participation by designated non-Federal representatives is addressed at § 402.08. This includes allowing the designated non-Federal representative to conduct the informal consultation and prepare biological assessments for formal consultations. The ultimate responsibility for complying with section 7(a)(2) of the Act lies with the consulting agency and, as such, they are best situated to determine when to designate non-Federal representatives, consistent with the regulations. As such, further regulation regarding non-Federal representatives in the consultation process is unnecessary.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is 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 final rule in a manner consistent with these requirements. This final rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Executive Order 13771

This rule is an Executive Order 13771 deregulatory action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) 5 U.S.C. 601 *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, or his or her designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certified at the proposed rule stage that this action will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

This rulemaking revises and clarifies existing requirements for Federal agencies under the Act. It will primarily affect the Federal agencies that carry out the section 7 consultation process. To the extent the rule may affect applicants, this rulemaking is intended to make the interagency consultation process more efficient and consistent, without substantively altering applicants' obligations. Moreover, this final rule is not a major rule under SBREFA.

This final rule will determine whether a Federal agency has insured, in consultation with the Services, that any action it would authorize, fund, or carry out is not likely to jeopardize listed species or result in the destruction or adverse modification of critical habitat. This rule is substantially unlikely to affect our determinations as to whether or not proposed actions are likely to jeopardize listed species or result in the destruction or adverse modification of critical habitat. The rule serves to provide clarity to the standards with which we will evaluate agency actions pursuant to section 7 of the Act.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained under *Regulatory Flexibility Act,* above, this final rule will not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments will not be affected because this final rule will not place additional requirements on any city, county, or other local municipalities.

(b) This final rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, this final rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This final rule will impose no additional management or protection requirements on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this final rule will not have significant takings implications. This rule will not pertain to ''taking'' of private property interests, nor will it directly affect private property. A takings implication assessment is not required because this final rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This final rule will substantially advance a legitimate government interest (conservation and recovery of endangered species and threatened species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism

In accordance with Executive Order 13132, we have considered whether this final rule would have significant effects on federalism and have determined that a federalism summary impact statement is not required. This final rule pertains only to improving and clarifying the interagency consultation processes under the Act and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This final rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This final rule will clarify the interagency consultation processes under the Act.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' the Department of the Interior's manual at 512 DM 2, and the Department of Commerce (DOC) Tribal Consultation and Coordination Policy (May 21, 2013), DOC Departmental Administrative Order (DAO) 218–8, and NOAA Administrative Order (NAO) 218–8 (April 2012), we have considered possible effects of this final rule on federally recognized Indian Tribes. Two informational webinars were held on July 31 and August 7, 2018, to provide additional information to interested Tribes regarding the proposed regulations. After the opening of the public comment period, we received multiple requests for coordination or government-to-government consultation from multiple tribes: Cowlitz Indian Tribe; Swinomish Indian Tribal Community; The Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of Warm Springs, Oregon; Quinault Indian Nation; Makah Tribe; Confederated Tribes of the Umatilla Indian Reservation; and the Suquamish Tribe. We subsequently hosted a conference call on November 15, 2018, to listen to Tribal concerns and answer questions about the proposed regulations. On March 6, 2019, FWS representatives attended the Natural Resources Committee Meeting of the United and South and Eastern Tribes' Impact Week conference in Arlington (Crystal City), VA. At this meeting, we presented information, answered questions, and held discussion regarding the regulatory changes.

The Services conclude that this rule makes general changes the Act's implementing regulations and does not directly affect specific species or Tribal lands or interests. The primary purpose of the rule is to streamline and clarify the steps the Services undertake in completing section 7 consultations with Federal agencies. Therefore, the Departments of the Interior and Commerce conclude that these regulations do not have ''tribal implications'' under section 1(a) of E.O. 13175 and that formal government-to-government consultation is not required by E.O. 13175 and related polices of the Departments. We will continue to collaborate with Tribes on issues related to federally listed species and work with them as we implement the provisions of the Act. See Joint Secretarial Order 3206 (''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' June 5, 1997).

Paperwork Reduction Act

This final rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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

We analyzed this final rule in accordance with the criteria of NEPA, the Department of the Interior regulations on implementation of NEPA (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 8), the NOAA Administrative Order 216–6A, and its Companion Manual, ''Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities,'' which became effective January 13, 2017. We have determined that, to the extent that the proposed action would result in reasonably foreseeable effects to the human environment, the final regulation is categorically excluded from further NEPA review and that no extraordinary circumstances are present. The rule qualifies for the substantially similar categorical exclusions set forth at 43 CFR 46.210(i) and NOAA Administrative Order 216–6A and Companion Manual at Appendix E (Exclusion G7). The amendments are of a legal, technical, or procedural nature. The rule only serves to clarify and streamline existing interagency consultation practices.

This final rule does not lower or raise the bar on section 7 consultations, and it does not alter what is required or analyzed during a consultation. Instead, it improves clarity and consistency, streamlines consultations, and codifies existing practice. For example, the change in the definition of ''effects of the action'' simplifies the definition while still retaining the scope of the assessment required to ensure a complete analysis of the effects of the proposed Federal action. The two-part test articulates the practice by which the Services identify effects of the proposed action. Likewise, the causation standard to analyze effects provides additional explanation on how we analyze activities that are reasonably certain to occur.

Other changes to 50 CFR part 402 are to aid in clarity and consistency. For example, we have separated out the definition of ''environmental baseline'' from effects of the action and added a second sentence to the definition to avoid confusion over ''ongoing actions.'' A regulatory deadline for informal consultation, as well as requiring reinitiation of informal consultation when certain triggers are met, are legal and procedural in nature. Our additional changes to 50 CFR 402.16 governing reinitiation of land management plans are also legal in nature and do not alter the review process for actions that cause ground-disturbing activities, and thus do not reduce procedural protection for listed species.

We also considered whether any ''extraordinary circumstances'' apply to this situation, such that the DOI and NOAA categorical exclusions would not apply. *See* 43 CFR 42.215 (DOI regulations on ''extraordinary circumstances''); NOAA Companion Manual to NAO 216–6, Section 4.A.

FWS completed an environmental action statement, which NOAA adopts, explaining the basis for invoking the agencies' substantially similar categorical exclusions for the revised regulations.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The final revised regulations are not expected to affect energy supplies, distribution, or use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this document is available on the internet at *http://www.regulations.gov* in Docket No. FWS–HQ–ES–2018–0009 or upon request from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Ecological Services Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041–3803, and the National Marine Fisheries Service's Endangered Species Division, 1335 East-West Highway, Silver Spring, MD 20910.

Authority

We issue this final rule under the authority of the Act, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Regulation Promulgation

Accordingly, we amend subparts A and B of part 402, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. Amend § 402.02 by revising the definitions of ''Destruction or adverse modification,'' ''Director,'' and ''Effects of the action'' and adding definitions for ''Environmental baseline'' and ''Programmatic consultation'' in alphabetic order to read as follows:

§ 402.02 Definitions.

* * * * *

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. *Director* refers to the Assistant Administrator for Fisheries for the National Marine Fisheries Service, or his or her authorized representative; or the Director of the U.S. Fish and Wildlife Service, or his or her authorized representative.

* * * * *

Effects of the action are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. (See § 402.17).

Environmental baseline refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are part of the environmental baseline.

* * * * *

Programmatic consultation is a consultation addressing an agency's multiple actions on a program, region, or other basis. Programmatic consultations allow the Services to consult on the effects of programmatic actions such as:

(1) Multiple similar, frequently occurring, or routine actions expected to be implemented in particular geographic areas; and

(2) A proposed program, plan, policy, or regulation providing a framework for future proposed actions.

* * * * *

■ 3. Amend § 402.13 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required.

* * * * *

(c) If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(1) A written request for concurrence with a Federal agency's not likely to adversely affect determination shall include information similar to the types of information described for formal consultation at § 402.14(c)(1) sufficient for the Service to determine if it concurs.

(2) Upon receipt of a written request consistent with paragraph (c)(1) of this section, the Service shall provide written concurrence or non-concurrence with the Federal agency's determination within 60 days. The 60-day timeframe may be extended upon mutual consent of the Service, the Federal agency, and the applicant (if involved), but shall not exceed 120 days total from the date of receipt of the Federal agency's written request consistent with paragraph (c)(1) of this section.

■ 4. Amend § 402.14 by:

■ a. Revising paragraph (c);

■ b. Removing the undesignated paragraph following paragraph (c);

■ c. Revising paragraphs (g)(2), (4), and (8) and (h);

■ d. Redesignating paragraph (l) as paragraph (m); and

■ e. Adding a new paragraph (l).

The revisions and addition read as follows:

§ 402.14 Formal consultation.

* * * * *

(c) *Initiation of formal consultation.* (1) A written request to initiate formal consultation shall be submitted to the Director and shall include:

(i) A description of the proposed action, including any measures intended to avoid, minimize, or offset effects of the action. Consistent with the nature and scope of the proposed action, the description shall provide sufficient detail to assess the effects of the action on listed species and critical habitat, including:

(A) The purpose of the action;

(B) The duration and timing of the action;

(C) The location of the action;

(D) The specific components of the action and how they will be carried out;

(E) Maps, drawings, blueprints, or similar schematics of the action; and

(F) Any other available information related to the nature and scope of the proposed action relevant to its effects on listed species or designated critical habitat.

(ii) A map or description of all areas to be affected directly or indirectly by the Federal action, and not merely the immediate area involved in the action (*i.e.,* the action area as defined at § 402.02).

(iii) Information obtained by or in the possession of the Federal agency and any applicant on the listed species and designated critical habitat in the action area (as required by paragraph (c)(1)(ii) of this section), including available information such as the presence, abundance, density, or periodic occurrence of listed species and the condition and location of the species' habitat, including any critical habitat.

(iv) A description of the effects of the action and an analysis of any cumulative effects.

(v) A summary of any relevant information provided by the applicant, if available.

(vi) Any other relevant available information on the effects of the proposed action on listed species or designated critical habitat, including any relevant reports such as environmental impact statements and environmental assessments.

(2) A Federal agency may submit existing documents prepared for the

proposed action such as NEPA analyses or other reports in substitution for the initiation package outlined in this paragraph (c). However, any such substitution shall be accompanied by a written summary specifying the location of the information that satisfies the elements above in the submitted document(s).

(3) Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with § 402.12.

(4) Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area, a programmatic consultation, or a segment of a comprehensive plan. The provision in this paragraph (c)(4) does not relieve the Federal agency of the requirements for considering the effects of the action or actions as a whole.

* * * * *

(g) * * *

(2) Evaluate the current status and environmental baseline of the listed species or critical habitat.

* * * * *

(4) Add the effects of the action and cumulative effects to the environmental baseline and in light of the status of the species and critical habitat, formulate the Service's opinion as to whether the action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

* * * * *

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions as proposed or taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation. Measures included in the proposed action or a reasonable and prudent alternative that are intended to avoid, minimize, or offset the effects of an action are considered like other portions of the action and do not require any additional demonstration of binding plans.

(h) *Biological opinions.* (1) The biological opinion shall include:

(i) A summary of the information on which the opinion is based;

(ii) A detailed discussion of the environmental baseline of the listed species and critical habitat;

(iii) A detailed discussion of the effects of the action on listed species or critical habitat; and

(iv) The Service's opinion on whether the action is:

(A) Likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a ''jeopardy'' biological opinion); or

(B) Not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a ''no jeopardy'' biological opinion).

(2) A ''jeopardy'' biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, the Service will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(3) The Service may adopt all or part of:

(i) A Federal agency's initiation package; or

(ii) The Service's analysis required to issue a permit under section 10(a) of the Act in its biological opinion.

(4) A Federal agency and the Service may agree to follow an optional collaborative process that would further the ability of the Service to adopt the information and analysis provided by the Federal agency during consultation in the development of the Service's biological opinion to improve efficiency in the consultation process and reduce duplicative efforts. The Federal agency and the Service shall consider the nature, size, and scope of the action or its anticipated effects on listed species or critical habitat, and other relevant factors to determine whether an action or a class of actions is appropriate for this process. The Federal agency and the Service may develop coordination procedures that would facilitate adoption of the initiation package with any necessary supplementary analyses and incidental take statement to be added by the Service, if appropriate, as the Service's biological opinion in fulfillment of section 7(b) of the Act.

* * * * *

(l) *Expedited consultations.* Expedited consultation is an optional formal consultation process that a Federal agency and the Service may enter into upon mutual agreement. To determine whether an action or a class of actions is appropriate for this type of consultation, the Federal agency and the Service shall consider the nature, size, and scope of the action or its anticipated effects on listed species or critical habitat and other relevant factors. Conservation actions whose primary purpose is to have beneficial effects on listed species will likely be considered appropriate for expedited consultation.

(1) *Expedited timelines.* Upon agreement to use this expedited consultation process, the Federal agency and the Service shall establish the expedited timelines for the completion of this consultation process.

(2) *Federal agency responsibilities.* To request initiation of expedited consultation, the Federal agency shall provide all the information required to initiate consultation under paragraph (c) of this section. To maximize efficiency and ensure that it develops the appropriate level of information, the Federal agency is encouraged to develop its initiation package in coordination with the Service.

(3) *Service responsibilities.* In addition to the Service's responsibilities under the provisions of this section, the Service will:

(i) Provide relevant species information to the Federal agency and guidance to assist the Federal agency in completing its effects analysis in the initiation package; and

(ii) Conclude the consultation and issue a biological opinion within the agreed-upon timeframes.

* * * * *

■ 5. Amend § 402.16 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a) through (d) as paragraphs (a)(1) through (4);

■ c. Designating the introductory text as paragraph (a);

■ d. Revising the newly designated paragraphs (a) introductory text and (a)(3); and

■ e. Adding a new paragraph (b).

The revisions and addition read as follows:

§ 402.16 Reinitiation of consultation.

(a) Reinitiation of consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

* * * * *

(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 written concurrence; or

* * * * *

(b) An agency shall not be required to reinitiate consultation after the approval of a land management plan prepared pursuant to 43 U.S.C. 1712 or 16 U.S.C. 1604 upon listing of a new species or designation of new critical habitat if the land management plan has been adopted by the agency as of the date of listing or designation, provided that any

authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation. This exception to reinitiation of consultation shall not apply to those land management plans prepared pursuant to 16 U.S.C. 1604 if:

(1) Fifteen years have passed since the date the agency adopted the land management plan prepared pursuant to 16 U.S.C. 1604; and

(2) Five years have passed since the enactment of Public Law 115–141 [March 23, 2018] or the date of the listing of a species or the designation of critical habitat, whichever is later.

■ 6. Add § 402.17 to read as follows:

§ 402.17 Other provisions.

(a) *Activities that are reasonably certain to occur.* A conclusion of reasonably certain to occur must be based on clear and substantial information, using the best scientific and commercial data available. Factors to consider when evaluating whether activities caused by the proposed action (but not part of the proposed action) or activities reviewed under cumulative effects are reasonably certain to occur include, but are not limited to:

(1) Past experiences with activities that have resulted from actions that are similar in scope, nature, and magnitude to the proposed action;

(2) Existing plans for the activity; and

(3) Any remaining economic, administrative, and legal requirements necessary for the activity to go forward.

(b) *Consequences caused by the proposed action.* To be considered an effect of a proposed action, a consequence must be caused by the proposed action (*i.e.,* the consequence would not occur but for the proposed action and is reasonably certain to occur). A conclusion of reasonably certain to occur must be based on clear and substantial information, using the best scientific and commercial data available. Considerations for determining that a consequence to the species or critical habitat is not caused by the proposed action include, but are not limited to:

(1) The consequence is so remote in time from the action under consultation that it is not reasonably certain to occur; or

(2) The consequence is so geographically remote from the immediate area involved in the action that it is not reasonably certain to occur; or

(3) The consequence is only reached through a lengthy causal chain that involves so many steps as to make the consequence not reasonably certain to occur.

(c) *Required consideration.* The provisions in paragraphs (a) and (b) of this section must be considered by the action agency and the Services.

§ 402.40 [Amended]

■ 7. Amend § 402.40, in paragraph (b), by removing ''§ 402.14(c)(1)–(6)'' and in its place adding ''§ 402.14(c)''.

Dated: August 12, 2019.

David L. Bernhardt,

Secretary, Department of the Interior.

Dated: August 9, 2019.

Wilbur Ross,

Secretary, Department of Commerce.

[FR Doc. 2019–17517 Filed 8–26–19; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 424

Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[Docket No. FWS–HQ–ES–2018–0006; Docket No. 180202112–8112–01; 4500030113]

RIN 1018–BC88; 0648–BH42

Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the ''Services'' or ''we''), revise portions of our regulations that implement section 4 of the Endangered Species Act of 1973, as amended (Act). The revisions to the regulations clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for listing or removing species from the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat.

DATES:

Effective date: This final regulation is effective on September 26, 2019.

Applicability date: These revised regulations apply to classification and critical habitat rules for which a proposed rule was published after September 26, 2019.

ADDRESSES: Public comments and materials received, as well as supporting documentation used in the preparation of this final regulation, are available on the internet at *http://www.regulations.gov* in Docket No. FWS–HQ–ES–2018–0006.

FOR FURTHER INFORMATION CONTACT: Gary Frazer, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone 202/208–4646; or Samuel D. Rauch, III, National Marine Fisheries Service, Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/427–8000. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, the Services published a proposed rule in the **Federal Register** (83 FR 35193) regarding section 4 of the Act and its implementing regulations in title 50 of the Code of Federal Regulations (CFR), part 424, which sets forth the procedures for the addition, removal, or reclassification of species on the Federal Lists of Endangered and Threatened Wildlife and Plants (lists) and designating critical habitat. In the July 25, 2018, **Federal Register** document, we provided the background for our proposed revisions to these regulations in terms of the statute, legislative history, and case law.

In this final rule, we focus our discussion on changes from the proposed revisions based on comments we received during the comment period and our further consideration of the issues raised. For background on the statutory and legislative history and case law relevant to these regulations, we refer the reader to the proposed rule (83 FR 35193, July 25, 2018).

In finalizing the specific changes to the regulations in this document, and setting out the accompanying clarifying discussion in this preamble, the Services are establishing prospective standards only. Although these regulations are effective 30 days from the date of publication as indicated in **DATES** above, they will apply only to relevant rulemakings for which the proposed rule is published after that date. Thus, the prior version of the regulations at 50 CFR part 424 will continue to apply to any rulemakings for which a proposed rule was published before the effective date of this rule. Nothing in these final revised regulations is intended to require that any previously completed classification decision or critical habitat designation must be reevaluated on the basis of these final regulations.

This final rule is one of three related final rules that are publishing in this issue of the **Federal Register**. All of these documents finalize revisions to various regulations that implement the Act.

Discussion of Changes From the Proposed Rule

In this section we discuss changes between the proposed regulatory text and regulatory text that we are finalizing in this document regarding the foreseeable future, factors for delisting, and designation of unoccupied critical habitat. We also explain a revision to the regulatory definition of ''physical or biological features.'' We are not modifying the proposed regulatory text for the section on prudent determinations of critical habitat or the proposed revision to 50 CFR 424.11(b). We are finalizing those sections as proposed.

Foreseeable Future

We proposed that the framework for the foreseeable future in 50 CFR 424.11(d) provide that the term foreseeable future extends only so far into the future as the Services can reasonably determine that the conditions potentially posing a danger of extinction in the foreseeable future are probable. The Services will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The Services need not identify the foreseeable future in terms of a specific period of time, but may instead explain the extent to which they can reasonably determine that both the future threats and the species' responses to those threats are probable.

The Services received numerous comments stating that many of the terms and phrases in the proposed framework are vague and unclear, and that the proposed framework impermissibly raises the bar for listing species as threatened species. Some commenters suggested in particular that ''likely'' should be used instead of ''probable,'' to avoid confusion and to ensure that the provision is consistent with the statutory definition of ''threatened species.'' In response to these comments and upon further consideration, we have revised the framework to provide that the term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. The Services will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The Services need not identify the foreseeable future in terms of a specific period of time.

We have removed the phrase ''conditions potentially posing a danger of extinction in the foreseeable future,'' and are replacing it with ''both the future threats and the species' responses to those threats.'' In light of the public comments received, we determined that

this particular phrase, as originally proposed, could be read incorrectly to imply that ''conditions'' could include something other than ''threats,'' and that ''conditions'' affecting the species need only be ''potential conditions'' and not actual or operative threats. In addition, we concluded that the phrase ''posing a danger of extinction'' could conflate the concept of the foreseeable future with the status of the species, instead of indicating that the foreseeable future is the period of time in which the Services can make reliable predictions about the threats and the species' responses to those threats.

We have also replaced the word ''probable'' with the word ''likely.'' While we had intended ''probable'' to have its common meaning, which is synonymous with the term ''likely,'' we have determined that it is most consistent with the statutory definition of ''threatened species'' to instead use the term ''likely.'' We have deleted the term ''probable'' and replaced it with the term ''likely'' to avoid any confusion on this point and to address public comments. We clarify that by ''likely'' the Services mean ''more likely than not.'' This is consistent with the Services' long-standing interpretation and previous judicial opinions.

Factors Considered in Delisting Species

We are making one minor change to the proposed regulatory text for 50 CFR 424.11(e). We have replaced ''will'' with ''shall'' in the first sentence of this provision to make it consistent with the language in other sections of 50 CFR 424.11. While we have not made any other changes, we note that when we use the term ''status review'' in the context of evaluating extinction or not meeting the definition of a ''species,'' this review may not necessarily involve an evaluation of the species' status relative to the five listing factors in section 4(a)(1) of the Act. As is our common practice, if the Services determine the entity does not meet the statutory definition of a ''species,'' the status review would conclude at that point. Likewise, if the Services determine an entity is extinct, there would be no need for the Services to evaluate the factors affecting the species as part of a status review.

We received many comments expressing concern over removing the terms ''recovery'' and ''error'' from the regulatory text because of a perception that the basis of the Services' actions would not be clear. As is the Services' current practice, we will continue to explain in proposed and final delisting rules why the species is being removed from the lists—whether due to recovery, extinction, error, or other reasons. These revisions do not alter, in any way, the Services' continued goal of recovery for all listed species.

Not Prudent Determinations

We proposed that 50 CFR 424.12(a)(1)(v) provide that after analyzing the best scientific data available, the Secretary otherwise determines that designation of critical habitat would not be prudent.

We note that this formulation could be misconstrued to suggest that the Secretary may make a determination irrespective of the data, provided the Secretary first analyzes the data. This interpretation, although grammatically possible, was not our intent and is not permissible under the Act. However, given that numerous comments expressed concern about expanding circumstances when the Services may find critical habitat designation to be not prudent, we decided to reorder 50 CFR 424.12(a)(1)(v) to provide that the Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

Designating Unoccupied Areas

We proposed that 50 CFR 424.12(b)(2) provide that the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species or would result in less efficient conservation for the species. Efficient conservation for the species refers to situations where the conservation is effective, societal conflicts are minimized, and resources expended are commensurate with the benefit to the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable likelihood that the area will contribute to the conservation of the species.

The Services received numerous comments that the term ''efficient conservation'' is vague and would introduce a requirement not contained in the statute. We also received numerous comments that the reasonable likelihood standard was not defined and is unclear. In response to these comments and upon further consideration, we revised 50 CFR 424.12(b)(2) to provide that the Secretary will designate as critical habitat, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species only upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

We have removed the proposed language regarding ''efficient conservation.'' Therefore, we will only designate unoccupied critical habitat if we determine that occupied critical habitat is inadequate for the conservation of the species. Public comments indicated that the ''efficient conservation'' concept was confusing and that implementation of this provision would be inordinately complex and difficult.

We have also revised the proposed language by replacing ''reasonable likelihood'' with ''reasonable certainty.'' Although ''reasonable likelihood'' and ''reasonable certainty'' both convey the need for information beyond speculation but short of absolute certainty, we find that the latter requires a higher level of certainty than the former. We intend the phrase ''reasonable certainty'' as applied to designation of unoccupied critical habitat in this final regulation to preclude designations of unoccupied critical habitat based upon mere potential or speculation—either as to the contribution of the area of unoccupied critical habitat to the species' conservation or as to the existence of one or more of the physical or biological features essential to the conservation of the species. At the same time, we do not intend to require that designations of unoccupied critical habitat be based upon guarantees or absolute certainty about the future conservation contributions of, or features present within, unoccupied critical habitat. In light of the public comments that the ''reasonable likelihood'' language was undefined and unclear, and could allow too much discretion to designate areas that would not ultimately contribute to species conservation, we concluded that the language of this final rule better reflects the need for high confidence that an area designated as unoccupied critical habitat will actually contribute to the

conservation of the species. We consider the phrase ''reasonable certainty'' to confer a higher level of certainty than ''reasonable likelihood,'' meaning a high degree of certainty, but not to require absolute certainty.

The Supreme Court recently held that an area must be habitat before that area could meet the narrower category of ''critical habitat,'' regardless of whether that area is occupied or unoccupied. See *Weyerhaeuser Co.* v. *U.S. FWS,* 139 S Ct. 361 (2018). We have addressed the Supreme Court's holding in this rule by adding a requirement that, at a minimum, an unoccupied area must have one or more of the physical or biological features essential to the conservation of the species in order to be considered as potential critical habitat. We note that we do not in the rule attempt to definitively resolve the full meaning of the term ''habitat.''

First, the language and structure of the statute support this interpretation. By its very terms the Act requires that areas designated as critical habitat be habitat for the species: ''The Secretary . . . shall . . . designate any *habitat* of [a listed] species which is then considered to be critical habitat'' (section 4(a)(3)(A)(i) of the Act (emphasis added)). Moreover, paragraph (C) of the statutory definition of ''critical habitat'' at section 3(5) makes clear that ''critical habitat shall not include the entire geographical area which can be occupied by the [listed] species.'' The phrase ''can be occupied'' in the definition demonstrates that all critical habitat—both occupied and unoccupied alike (the use of ''can be'' instead of ''is'' demonstrates that the provision is not limited to occupied habitat)—must be habitat because the only way that an area ''can be occupied'' is if it is habitat. Further, the use of the present tense—''are essential''—in section 3(5)(A)(ii) indicates that for an unoccupied area to qualify as ''critical habitat,'' it must currently be essential for the conservation of the species. The Services interpret this requirement to mean that there is a reasonable certainty both that the area currently contains one or more of the physical or biological features essential to the conservation of the species and that the area will contribute to the species' conservation. A reasonable reading of the statutory definition of ''unoccupied'' critical habitat would find that areas that do not contain at least one of the features essential to life processes of the species or will not contribute to the conservation of the species cannot be essential for conservation.

Second, the legislative history supports the conclusion that unoccupied habitat must contain one or more of those physical or biological features essential to the conservation of the species. While the 1973 Act did not define ''critical habitat,'' the Services' 1978 regulations did define ''critical habitat'' as ''any air, land, or water area . . . and constituent elements thereof, the loss of which would appreciably decrease the likelihood of survival and recovery of a listed species . . . . The constituent elements of critical habitat include, but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.'' 43 FR 870, 874–875 (Jan. 4, 1978).

In response to the Tellico Dam decision by the Supreme Court, *Tennessee Valley Authority* v. *Hill,* 437 U.S. 153 (1978), Congress amended the Act in a number of ways, including by providing a statutory definition of ''critical habitat.'' Notably, Congress did not adopt the Services' regulatory definition. Congress was concerned that the agencies' ''regulatory definition could conceivably lead to the designation of virtually all of the habitat of a listed species as its critical habitat.'' H.R. Rep. No. 95–1625, at 25 (1978). The House ''narrow[ed]'' the definition and told the agencies to be ''exceedingly circumspect in the designation of critical habitat outside of the presently occupied areas of the species.'' *Id.* at 18, 25. Additionally, the Senate Report noted there is ''little or no reason to give exactly the same status to lands needed for population expansion as is given to those lands which are critical to a species' continued survival.'' S. Rep. No. 95–874, at 10 (1978).

The Senate Report recognized the potential value of designating unoccupied habitat to expand populations, but questioned how broadly it could be used. *Id.* at 9–10 (''The goal of expanding existing populations of endangered species in order that they might be delisted is understandable''; ''This process does, however, substantially increase the amount of area involved in critical habitat designation and therefore increases proportionately the area that is subject to the regulations and prohibitions which apply to critical habitats''). The Senate specifically criticized designations of critical habitat that include land ''that is not habitat necessary for the continued survival'' of the species, but is instead ''designated so that the present population within the true critical habitat can expand.'' *Id.* at 10.

Thus, we conclude that Congress intended that the test be more demanding for designating unoccupied critical habitat than for occupied habitat. All the courts to address this issue have agreed with this general principle. *E.g., Home Builders Ass'n* v. *U.S. Fish & Wildlife Service,* 616 F.3d 983, 990 (9th Cir. 2010) (''Essential conservation is the standard for unoccupied habitat . . . and is a more demanding standard than that of occupied critical habitat.''); *Cape Hatteras Access Pres. All.* v. *U.S. Dep't of Interior,* 344 F. Supp. 2d 108, 119 (D.D.C. 2004) (''it is not enough that the area's features be essential to conservation, the area itself must be essential''). As the Act and its legislative history makes clear, Congress intended that unoccupied critical habitat be defined more narrowly than as areas contemplated for species expansion. H.R. Rep. No. 95–1625 pp. 18, 25 (1978); S. Rep. No. 95–874, at 9–10 (1978). We have concluded that requiring that areas contain one or more features that the species needs furthers this congressional intent.

Note that, although the Conference Committee changed the definition of ''critical habitat'' so that it was no longer modeled after the 1978 regulatory definition as closely, Congress did not call into question the rest of that definition, which focused uniformly on aspects of habitat that were analogous to the concept of ''essential features'': '''Critical habitat' means any air, land, or water area . . . and constituent elements thereof . . . . The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air.'' 43 FR 870, 874–875 (Jan. 4, 1978). Moreover, areas outside the occupied geographical range are not likely to be ''essential for the conservation of the species'' unless they contain at least one of the features that are essential for survival and recovery of the species.

We acknowledge that the reference to ''physical or biological features'' in the definition of ''critical habitat'' only occurs in the portion addressing occupied habitat. Nevertheless, given that Congress intended that a higher standard apply to the designation of unoccupied critical habitat than to the designation of occupied critical habitat, the Services conclude that it furthers congressional intent to require that those areas contain one or more of the physical or biological features that are essential to the conservation of the

species. This interpretation retains the 1978 regulation's focus on physical or biological features and furthers the objective Congress referenced when it adopted the definition of ''critical habitat'' that included both occupied and unoccupied habitat: Allowing for the possibility of protecting areas that are reasonably certain to contribute to the conservation of the species while limiting the designation to areas where the species can survive.

We note that the Services have not previously taken the position that unoccupied habitat must contain physical or biological features that are essential to the conservation of the species. In fact, in litigation FWS has sometimes argued the contrary. *E.g., Weyerhaeuser Co.* v. *U.S. FWS,* No. 17–71 (S. Ct.); *Bear Valley Mutual Water Co.* v. *Jewell,* 790 F.3d 977 (9th Cir. 2015). Although our previous interpretation was reasonable, we have revisited our interpretation in light of the recent *Weyerhaeuser* decision, which held that critical habitat must be ''habitat.'' Given the ambiguity of the language at issue, we may interpret it in any manner that is a reasonable construction of the Act and consistent with controlling court decisions.

Physical or Biological Features

We received a number of comments in response to our invitation for recommendations on whether the Services should consider modifying the definition of ''physical or biological features'' at 50 CFR 424.02. We adopted this regulatory definition in 2016 to provide an interpretation of this term, which appears in the Act's definition of ''critical habitat,'' that was simpler and closer to the statutory text than the prior approach we had followed since 1984. The prior approach had involved identification of ''primary constituent elements,'' which is a term not used in the statute and which we found led to significant confusion.

We defined the term ''physical or biological features'' at a general level in 2016, with the expectation that the Services would first identify the physical or biological features that support the species' life-history needs, and then narrow that group of features down to a subset of those features that meet all the requirements the statute imposes for features that could lead to a designation of occupied critical habitat. Thus, once physical or biological features had been identified, the Services would apply the language from section 3(5)(A) of the Act. That language layers on additional qualifiers, including that the features ''are essential to the conservation of the species'' and ''may require special management considerations or protection.'' Further, the statute limits designation of occupied habitat to ''specific areas'' on which one or more of those features are found.

Many commenters expressed concern that the definition should be more clearly limited only to those features that could, in the context of the statutory requirements, actually lead to designation of a specific area as critical habitat.

We have decided in the interests of clarity to make minor modifications to the existing definition to provide that physical or biological features essential to the conservation of the species are 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.

We find that the changes we are making, which we detail below, are helpful to emphasize the key statutory language and make clear that only those features that are essential to the conservation of the species can lead to a designation of occupied critical habitat (assuming the requirement that the features may require special management considerations or protection is also met). First, in order to bring such clarity directly into the regulatory text, we have found that we should identify the term more specifically. The full term used in the statutory definition of occupied critical habitat is ''physical or biological features . . . *essential to the conservation of the species,*'' and therefore we are modifying the defined term to read ''physical or biological features essential to the conservation of the species.''

Second, we incorporate the statutory requirement that essential features be found on specific areas by qualifying ''features'' with the new phrase ''that occur in specific areas.'' We note that the use of the word 'on' in the statute has been interpreted by the Services to mean 'in' when used in conjunction with specific areas. Therefore, ''features found on specific areas'' is synonymous with ''features found in specific areas.'' Finally, instead of referring to the broader group of features that ''support the life-history needs'' of the species, and in keeping with further focusing the scope of the defined term, we have added language specifying that these are the features which are ''*essential* to support the life-history needs'' of the species. We retain the rest of the language of the current definition, which makes clear that, in identifying the essential physical or biological features, the Services are to articulate those features with the level of specificity previously associated with ''primary constituent elements'' (an issue we discuss further in response to comments, below).

Summary of Comments and Responses

In our proposed rule published on July 25, 2018 (83 FR 35193), we requested public comments on our specific proposed changes to 50 CFR part 424. We also sought public comments recommending, opposing, or providing feedback on specific changes to any provisions in part 424 of the regulations, including but not limited to revising or adopting as regulations existing practices or policies, or interpreting terms or phrases from the Act. In particular, we sought public comment on whether we should consider modifying the definitions of ''geographical area occupied by the species'' or ''physical or biological features'' in 50 CFR 424.02. We received several requests for public hearings and requests for extensions to the public comment period. Public hearings are not required for regulation revisions of this type, and we elected not to hold public hearings or extend the public comment period beyond the original 60-day public comment period. We received more than 65,000 submissions representing hundreds of thousands of individual commenters. Many comments were nonsubstantive in nature, expressing either general support for or opposition to provisions of the proposed rule with no supporting information or analysis. We also received many detailed substantive comments with specific rationale for support of or opposition to specific portions of the proposed rule. Below, we summarize and respond to the significant, substantive public comments sent by the September 24, 2018, deadline and provide responses to those comments.

Comments on Presentation of Economic or Other Impacts

Comment: Most commenters disagreed with removing the phrase ''without reference to possible economic

or other impacts of such determination'' and our proposal to present the economic impacts of listing determinations. Many stated that this change violates the intent of the Act and cited the Act and its legislative history in support of their statements. Furthermore, a commenter also stated that the Services are prohibited by the Act from compiling and presenting economic data on the listing of a species as a threatened or an endangered species, citing the conference report language from the 1982 amendments to the Act: ''economic considerations have no relevance to determinations regarding the status of species and the economic analysis requirements of Executive Order 12291, and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act, will not apply to any phase of the listing process.'' Many commenters also questioned how the Services could compile such economic information and not have it influence their decision whether to list a species as a threatened or an endangered species, noting that the statute and legislative history are clear that listing decisions are to be based solely on the best scientific and commercial data available. In contrast, several commenters stated that providing the economic impacts of listing species shows transparency to the public and local, State, and tribal governments, and could be useful for planning purposes. Commenters noted that making this information available does not mean that it will be used in the decisionmaking process, but it would provide important information about the impacts of implementing the Act.

Response: In this final rule, the Services remove the phrase ''without reference to possible economic or other impacts of such determination.'' As discussed in the preamble to the proposed rule, we acknowledge that the statute and its legislative history are clear that listing determinations must be made solely on the basis of the best scientific and commercial data available. Moreover, the listing determination must be based on whether a species is an endangered species or a threatened species because of any of the five statutory factors. However, the Act does not prohibit the Services from compiling economic information or presenting that information to the public, as long as such information does not influence the listing determination. Similarly, the statements Congress included in the legislative history focus on ensuring that economic information would not affect or delay listing determinations, but do not demonstrate an intention to prohibit the Services from compiling information about economic impacts. For example, the legislative history for the 1982 amendments to the Act describes the purposes of the amendments using the following language (emphases added): ''to prevent non-biological considerations *from affecting* [listing] decisions,'' Conf. Rep. (H.R.) No. 97–835 (1982) (''Conf. Rep.''), at 19; ''[listing and delisting] decisions *are based* solely upon biological criteria,'' Conf. Rep., at 20; ''economic considerations *have no relevance to* [listing] determinations,'' Conf. Rep., at 20; ''to prevent [critical habitat] designation] *from influencing* the [listing] decision,'' H.R. Rep. No. 97–567, at 12. Because neither the statute nor the legislative history indicates that Congress intended to prohibit the Services from compiling economic information altogether, we removed the language at issue.

Comment: Some commenters stated that Congress intended that ''the balancing between science and economics should occur subsequent to listing'' and pointed to statements in the legislative history and in the court's decision in *Alabama Tombigbee Rivers Coal.* v. *Kempthorne,* 477 F.3d 1250, 1266 (11th Cir. 2007): ''While 'economic analysis' is meant to 'offer[ ] some counter-point to the listing of species without due consideration for the effects on land use and other development interests,' Congress wanted 'to prevent [habitat] designation from influencing the decision on the listing of a species,' and for that reason intended that the 'balancing between science and economics should occur subsequent to listing through the exemption process.' House Report at 12 (emphasis added); cf. Senate Report at 4.''

Response: The commenters' characterizations of the legislative history and the court's decision in the *Alabama-Tombigbee* case are not accurate. In that case, FWS listed two fish without concurrently designating critical habitat, and the court concluded that Congress did not intend to prohibit designating critical habitat subsequent to the final listing decision. The court based its reasoning on the statute and legislative history: The requirement to complete final listing determinations within 1 year of listing proposals, the removal of the requirement to propose critical habitat concurrently with proposed listings, the addition of authority to make not-determinable findings for critical habitat, and the quoted language in the legislative history demonstrating Congress's intent to keep consideration of economic factors (part of the critical habitat designation process) separate from listing decisions. Thus, the court in that case was analyzing not whether compilation of economic information *must* come after the final listing decision, but whether compilation of economic information during the critical habitat designation *may* come after listing decisions. As a result, the decision in *Alabama-Tombigbee* and the legislative history that the court quoted in that case are an unsuitable comparison to the regulatory change the Services proposed. And, more fundamentally, the mandate that the Secretary ''shall, concurrently with making a [listing] determination . . ., designate any habitat of such species which is then considered to be critical habitat'' is qualified by the ''to the maximum extent prudent and determinable'' language. Therefore, Congress authorized, but did not require, the Services to designate critical habitat after the final listing decision, and the Services continue to publish final critical habitat designations (whenever designation is prudent) concurrently with final listing decisions unless they are not determinable at the time of listing.

Comment: Some commenters stated that the Services' comparison to the Environmental Protection Agency's (EPA's) practice of conducting cost-benefit analyses under the Clean Air Act's National Ambient Air Quality Standards is irrelevant and pointed to differences between the Act and the Clean Air Act. Specifically, the Clean Air Act directs the EPA to compile economic information and has a follow-on process (development of State implementation plans) that the economic information informs. Other commenters stated that EPA's process for completing a regulatory impact analysis (RIA) of the ambient air quality standards under the Clean Air Act is not comparable to the Services' process for listing a species under the Act. These commenters stated that the costs associated with ambient air quality measures are more easily estimated, and that costs associated with listing a species do not necessarily have an economic value and assessing their ''worth'' or ''value'' would be very difficult. Some commenters also noted that EPA typically does not ''make reference'' to the impact analysis in their rules proposing or adopting air standards.

Response: While the Services recognize that there are differences between the statutory frameworks of the Clean Air Act and the Act, the EPA example illustrates that it is possible for an agency to compile and present

economic data for one purpose while not considering it in the course of carrying out a decision process where consideration of economic data is prohibited. Nothing in the Act precludes the agencies from compiling or disclosing information relating to the economic impacts for purposes of informing the public. With regard to whether EPA ''makes reference'' to its impact analyses in its rulemakings adopting national ambient air quality standards, we note that the commenter's observation highlights an ambiguity in the existing regulatory language that we are removing. The commenter seems to equate ''reference'' to economic impacts to mean ''making reference to,'' *i.e.,* ''citing,'' the information in agency determinations or giving such considerations significance in the decisionmaking. However, the term ''reference'' can be construed more broadly as an instance of simply referring to something as a source of information, *i.e.,* to use or consult, which could be done in passing. It is not our intention to ''make reference'' to economic information in our listing determinations either by citing it or by considering it.

Comment: Some commenters noted that the Act does not expressly authorize compiling or referring to economic information regarding listing determinations. Some noted that it would not be appropriate to attempt to do so to inform critical habitat designations (citing *Arizona Cattle Growers' Ass'n* v. *Salazar,* 606 F.3d 1160, 1173 (9th Cir. 2010) (holding that analysis of the impacts of designation of critical habitat is separate from analyzing impacts from listing)).

Response: The Act does not expressly authorize compiling economic information, and the statute does not prohibit compiling the information in order to inform the public. We rely on our inherent authority to administer our programs in the interest of public transparency in concluding that the Services have discretion to compile such information regarding a particular listing if they choose.

Comment: Several commenters asserted that the Services' reasoning for deleting the ''without reference to economic or other impacts of listing'' phrase contradicts their interpretation and reasoning from when they adopted the previous regulations following the 1982 amendments to the Act, which added the word ''solely.'' They cited to the Services' proposed rule, which stated: ''Changes made by the Amendments were designed to ensure that decisions in every phase of the listing process are based solely on biological consideration, and to prohibit considerations of economic or other non-biological factors from affecting such decisions. . . . This new paragraph is proposed to implement the requirement of the Amendments that determinations regarding the biological status of a given species not be affected or delayed by any consideration of the possible economic or other effects of such a determination.'' 48 FR 36062 (Aug. 8, 1983).

Response: The preamble to the 1984 final rule originally adopting the existing language is illuminating. After the language was proposed in 1983, a commenter had recommended that the ''without reference to possible economic or other impacts of such determination'' not be included in the final language, but the Services responded that ''no substantial change'' would result from adopting such a recommendation. 49 FR 38900, 38903 (Oct. 1, 1984). At the time, the Services felt that including the language would more clearly express Congressional intent and reflect the guidance in the Conference Report to the 1982 amendments, but also made clear their understanding that the legal effect of the 1982 amendment adding the word ''solely'' was to insure economic or other impacts were not ''considered'' by the decision-maker ''as part of the identification and listing process,'' *id.,* and to prevent such considerations from ''affecting decisions regarding endangered or threatened status'' or being ''taken into account in deciding whether to list a given species.'' *Id.* at 38900.

The statutory amendment requiring that listing determinations be based solely on the best scientific and commercial data did not address whether the Services could prepare information for the public on other aspects of the implications of their decisions. On its face, the statutory amendments merely required that the Services not take such matters into consideration in determining whether a species meets the definition of a threatened species or an endangered species. Some members of the public and Congress have become increasingly interested in better understanding the impacts of regulations including listing decisions. Therefore, we find it is in the public interest and consistent with the statutory framework to delete the unnecessary language from our regulation while still affirming that we will not consider information on economic or other impacts in the course of listing determinations.

Comment: Several commenters opined that removing the existing regulatory language ''without reference to possible economic or other impacts of such determination'' would signal that the Services' commitment to abide by the will of Congress to base listing decisions solely on the best scientific and commercial data has weakened. Some commenters suggested that the Services' motives were suspect given that the regulation has been in place since 1984 with no indication that implementation was problematic. Some claimed that removing the regulatory language was inconsistent with the Supreme Court's holdings in *T.V.A.* v. *Hill,* 437 U.S. 153 (1978).

Response: Removing the phrase does not signal any difference in the basis upon which listing determinations will be made. As we have affirmed in several instances through the proposed and final rules, the Services understand and appreciate the statutory mandate to base listing determinations solely on whether a species is an endangered species or a threatened species because of any of the factors identified in section 4(a)(1) using the best scientific and commercial data available. Removing this phrase from the regulation, which could be construed to not allow the Services to inform the public of the economic implications of the Services' listing decisions, will not violate any direction of Congress or holdings of the Supreme Court. Rather, we are responding to strong and growing interest by some members of Congress and the public for increased transparency regarding the economic impacts of regulations. We note that the *T.V.A.* decision was decided in the particular context of compliance with section 7 after a species had been listed and has no direct bearing on interpretation of the Act's listing provisions. *T.V.A.* was also decided before Congress amended section 4(a)(1) to include the term ''solely,'' so its holding has no relevance to the interpretation of this term in the statute.

Comment: One commenter suggested that it was unnecessary to delete the ''without reference to economic or other impacts'' language if the Services' intent is merely to be able to inform the public of the impacts of listing. The commenter agreed that Congress did not prohibit doing so, as long as the listing determinations are not influenced by such information, but noted that the Services had not pointed to any situation where the existing language had presented a hurdle to providing desired public information. Rather, the commenter asserted, maintaining the existing language in the regulations would provide a daily reminder to Service staff about the importance of cabining consideration in listing

determinations to only the factors authorized under the Act.

Response: We believe that the removal of the phrase will more closely align the regulatory language to the statutory language. Because the prior language could be read to preclude conducting an analysis merely for the purposes of informing the public, it is more transparent to delete the phrase.

Comment: Many commenters asked for more information regarding when the Services would conduct an economic analysis for listing determinations, how the Services would estimate potential economic impacts, what criteria would be considered, and whether economic benefits of a particular species, which can be difficult to quantify, would be considered. Some commenters expressed concern that cost/benefit analyses would be skewed toward only accounting for potential costs. Another commenter suggested our impacts analysis include an analysis of the negative impacts to other species, as management for a listed species could be a contributing factor for the endangerment of a non-listed species.

Response: The Services are not creating a framework or guidelines for how or when the presentation of economic impacts of listing, reclassifying, or delisting species would occur as part of this rulemaking. We remain committed to basing species' classification decisions on the best available scientific and commercial data and will not consider economic or other impacts when making these decisions.

Comment: Many commenters questioned how the Services would comply with the statutory timeframes if we conducted economic analyses on the listing determination. Commenters stated that the Services have not explained how they will deal with this additional workload. They also expressed concerns about the amount of time and effort it would take to gather the necessary economic or other impact information and stated that this added work would slow the number of listings that could be done under current budget conditions. Such a delay, the commenters stated, could make the Services more vulnerable to deadline litigation.

Response: The Services intend to comply with statutory, court-ordered, and settlement agreement timelines for classification determinations. The Services are equally committed to public transparency in the implementation of the Act. Additionally, we recognize the uncertainty of budget cycles and appropriated funding. Therefore, we will continue to prioritize our work according to the requirements of the Act and remain flexible to work on other actions as funding allows.

Comment: At least one commenter suggested that the Services should affirmatively declare that information regarding the economic or related impacts of a potential listing can be considered in making listing determinations, in light of the statutory reference to the best scientific ''and commercial data'' available.

Response: We decline to do so.

Comment: Some commenters stated that even though the Act does not expressly prohibit presenting information regarding economic impacts, doing so will contravene Congress' intention that listing decisions should be purely a biological question immune from political concerns. They asserted that presenting analysis of economic impacts even merely to inform the public would open the Services to pressure to avoid listings where there are significant social, political, or economic implications. They noted that the provisions regarding designation of critical habitat expressly authorize consideration of economic and other impacts, demonstrating that Congress consciously chose not to authorize such for listing decisions. They cited the decision in *Northern Spotted Owl* v. *Hodel,* 716 F. Supp. 479 (W.D. Wash. 1988), as an example where the court set aside a decision not to list a species on the grounds that it was ''arbitrary and capricious or contrary to law,'' predicting that such litigation and adverse results would be more common if the proposed change is finalized.

Response: Congress did not authorize the Services to consider the economic impacts of listing decisions. Therefore, the Services have expressly confirmed their intention that all listing determinations must be based solely on the best scientific and commercial data available. While the commenter is correct that the *Hodel* decision was unfavorable for FWS, resulting in remand of the determination not to list the northern spotted owl, the basis for the decision was the court's view of the sufficiency of the scientific support and explanation for the FWS' decision, rather than a direct consideration of whether economic considerations had impermissibly played a role in the determination.

Comment: The Services cannot rely on the Regulatory Flexibility Act (RFA) as providing authority for presentation of economic impact information of listing determinations because the Services have taken the position that the RFA is not applicable to listing determinations. *See, e.g.,* Endangered and Threatened Wildlife and Plants: Final Rule to List the Taiwanese Humpback Dolphin as Endangered Under the Endangered Species Act, 83 FR 21182, 21186 (May 9, 2018).

Response: We do not rely on the RFA as a basis for presentation of economic impacts of classification determinations (H.R. Conf. Rep. No. 97–835, at 20 (1982)). The Services may elect to provide a presentation of economic impacts of particular listing decisions to inform the public of those costs. The Act does not preclude the compilation and presentation of those impacts to the public.

Comments on the Foreseeable Future

Comment: Commenters stated that if the intended goal of the proposed foreseeable future framework is to continue to follow a 2009 opinion from the Department of the Interior (M–37021) for interpretation of ''foreseeable future,'' as the Services indicate in the proposed rule, then there is no need to make the proposed revision to the regulations. Some commenters recommended that the Services simply base the ''foreseeable future'' on the best available data and not proceed with the proposed regulation, which does nothing to clarify how the Services will determine the foreseeable future.

Response: Although listing determinations must be based on the best available scientific and commercial data, the Services also must be able to determine the likelihood of a species' future state, and in some circumstances the best available data may not be sufficient to go beyond speculation. In these cases, the data are insufficient to allow the Services to foresee the future threats and the species' response to those threats so as to be able to determine that a species is likely to become endangered in the future. To give meaning to the phrase ''foreseeable future,'' the Services are providing a consistent explanation of this term, and we find that it is appropriate to do so in our implementing regulations. While the two Services have both applied the principles articulated in a 2009 opinion from the DOI Office of the Solicitor when interpreting the phrase ''foreseeable future,'' including a foreseeable future framework in our joint implementing regulations gives the public more transparency, provides the Services with a shared regulatory meaning for this important term, and makes it clear that both agencies will adhere to the same framework.

Comment: Numerous commenters supported the Services' effort to clarify

the meaning of the term ''foreseeable future''; however, most of these commenters also stated that one or more of the terms used in the proposed ''foreseeable future'' framework, such as ''potential,'' ''probable,'' ''reasonably,'' ''reasonably determine,'' and ''reliable,'' are vague, unclear, or could be misinterpreted. Commenters specifically requested that one or more of these terms be clarified or removed, because they give the public little understanding of what criteria the Services will use to evaluate the foreseeable future. Various commenters were concerned that the proposed foreseeable future language could allow for speculation, prevent or undermine the Service's ability to rely on the best available science, result in a less streamlined process, or invite political interference with listing decisions.

Several commenters recommended that the terms ''potentially'' and ''reasonably'' be omitted, because those terms could be misread and dilute the statutory standard of ''likely.'' A commenter stated that ''reasonably'' could be misconstrued to suggest a reasonable basis is sufficient, rather than the affirmative finding of ''likely'' actually required by the Act. Another commenter noted that a standard that relies on a mere ''potential'' for future conditions to pose a danger invites speculation about future circumstances, and, as the Services acknowledge, they should ''avoid speculating as to what is hypothetically possible.'' 83 FR at 35196, July 25, 2018.

Other commenters recommend specific edits, such as replacing ''reasonably determine'' with ''scientifically determine,'' and removal of the term being defined (*i.e.,* ''foreseeable future'') from the proposed definition of ''foreseeable future.''

Response: We appreciate the many comments regarding the wording of the proposed ''foreseeable future'' framework. We agree with the comments that including the term ''foreseeable future'' as part of the definition of this term is somewhat circular and therefore not appropriate, so we have revised the language to remove this circular phrasing. We have also removed the phrase containing the word ''potentially'' as explained further in response to the comment below. However, we are not defining the terms ''reliable'' and ''reasonably determine,'' because these terms are commonly used and should be interpreted as having their everyday meaning. The regulatory framework is consistent with how these terms are used in the M-Opinion (M–37021, January 16, 2009), which states, in a footnote, that ''the words ''rely'' and ''reliable'' [are used] according to their common, non-technical meanings in ordinary usage. Thus, for the purposes of this memorandum, a prediction is reliable if it is reasonable to depend upon it in making decisions.'' As a concluding statement, the M-Opinion also states that ''reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.'' We find that these statements make it clear how the Services intend to interpret these terms and conclude that further attempts to define words within the ''foreseeable future'' framework are not necessary.

Lastly, we find that the framework's term ''reasonably'' does not dilute or establish an incompatible, lower standard for the affirmative finding of ''likely'' required by the statute. The foreseeable future framework acknowledges that we must make a 'reasonable determination,' based on the best available data. In other words, in the context of determining the foreseeable future, our conclusions need not be made with absolute certainty, but they must be reasonable, and must not be arbitrary or capricious. We also decline to replace the phrase ''reasonably determine'' with ''scientifically determine,'' because the foreseeable framework does not in any way alter the requirement that the Services rely on the best available scientific and commercial data when interpreting the foreseeable future and listing species as threatened. We fully intend to continue to apply the best available data when making conclusions about the foreseeable future.

Comment: Several commenters stated that the foreseeable future should not be based on general ''conditions'' and requested that we clarify that the word ''conditions'' refers to threats and species' responses to those threats. Commenters stated the statute does not allow for broader consideration of any ''conditions'' that are not encompassed within the five factors defined by Congress. Another commenter also stated that the use of the term ''conditions'' in the context of the proposed regulatory framework suggests that the Services will only examine the environmental conditions affecting a species (*i.e.,* the threat factors) and not the corresponding response of the species when determining the species' future population status. The commenter noted that it is well established that a species cannot be listed merely because there is an identified threat (*e.g., Ctr. for Biological Diversity* v. *Lubchenco,* 758 F. Supp. 2d 945, 955 (N.D. Cal. 2010); *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136, 1143 (9th Cir. 2001)). The commenter stated that by referencing conditions ''potentially posing a danger of extinction,'' the Services are not incorporating the appropriate level of certainty with respect to whether the ''conditions'' will occur and the corresponding relationship to the future status of the species. The Services are also raising the possibility that a ''benefit of the doubt'' standard could erroneously be applied during the listing determination (*Bennett* v. *Spear,* 520 U.S. 154, 176 (1997); *Greater Yellowstone Coal., Inc.* v. *Servheen,* 665 F.3d 1015, 1028 (9th Cir. 2011)).

Response: As some commenters point out, the Act requires listing determinations to be based on whether a species is an endangered species or threatened species because of one or more of the five factors in section 4(a)(1), and it is the Services' long-established practice to refer to these factors in listing determinations. The ''foreseeable future'' framework in these final regulations does not supplant those five factors or the statutorily required status review. Rather, use of the word ''conditions'' was intended to capture the full range of possible natural and manmade threats that may be affecting a particular species and that would be considered under section 4(a)(1). However, we now find it is more clear to simply use the word ''threats,'' rather than ''conditions,'' and thus have made this revision to the final regulatory text. In addition, after further consideration of the proposed language, we find that the phrase ''potentially posing a danger of extinction'' could be interpreted as implying that the Services would rely on a ''benefit of the doubt'' standard for determining the existence of a threat or consider the mere possibility of threat occurring sufficient when assessing a species' future status. This was not our intention, and we acknowledge that the statutory requirement to use the ''best scientific and commercial data available'' is intended ''to ensure that the Act not be implemented haphazardly, or on the basis of speculation or surmise.'' *See Bennett* v. *Spear,* 520 U.S. 154, 176–77 (1997) (construing substantially identical requirement in section 7 context). Thus, we have removed this phrase from the final regulatory language to eliminate this source of confusion.

Comment: A large number of comments addressed the Services' use of the word ''probable'' within the proposed foreseeable future framework. Several commenters stated that the use of the word ''probable'' introduces more

ambiguity to an already ambiguous framework and that it is unclear, for example, what degree of probability and certainty are required to be considered ''probable.'' Several commenters specifically requested that the Services clarify that the term ''probable'' means ''likely'' in this particular context, and others requested use of the word ''likely'' in place of ''probable'' to reflect the statutory standard. Some commenters stated that the word ''probable'' implies that the Services will rely on too low of an evidence threshold and that the word ''probable'' should be replaced with ''clear and convincing.''

The majority of commenters who addressed this issue stated that use of the word ''probable'' would set too high of a bar for threatened listings, provides the Services greater latitude to reject listings, and contravenes Congress's intent that the Act ''give the benefit of the doubt to the species'' (H.R. Rep. No. 96–697, at 12 (1979)). The commenters also argued that the proposed regulation would be inconsistent with the statements expressed in the M-Opinion (M–37021, January 16, 2009). Multiple commenters indicated specifically their view that the proposed framework is much narrower than that expressed in the 2009 M-Opinion, which does not use the term ''probable,'' and that the Services did not adequately explain their reasoning for departing from the standards expressed in the M-Opinion. Commenters further noted that the ''probable'' standard would undermine the Secretary's duty to list species that are primarily threatened by climate change. Others stated that it would prevent the application of the Act's requirement to rely on the ''best available scientific and commercial data'' and that the Services cannot interpret the foreseeable future in a way that sets an arbitrary threshold for how much science is required before a species can be listed as threatened. Multiple commenters recommended that if the Services wish to adopt a definition in line with the M-Opinion, they should adhere more closely to the 2009 Solicitor's opinion or publish it as a draft joint policy for notice and comment, which would accord with the Services' past practice of publishing joint policies to interpret the Act's key phrases such as ''significant portion of the range'' and ''distinct population segment.''

Some commenters provided discussions of other reasons why use of a ''probable'' standard would be inappropriate. A group of commenters stated that use of the term ''probable'' implies that the Services may only consider threats that have a 50 percent or greater chance of occurring during a particular time period and that the Services have not explained how they would reliably quantify the percentage of likelihood of threats to species. These commenters also noted that it would be unlawful and arbitrary to discount several threats that may be, say, 40 percent likely but that would be extremely dangerous to the species and that such an approach would be contrary to the Services' longstanding precautionary approach. *Cf.* 48 FR 43098, 43102–43103 (Sept. 21, 1983) (FWS guidelines for reclassification from threatened species to endangered species status based on magnitude and immediacy of threats). Other commenters pointed out the only way to assess what is ''probable'' requires quantitative methods such as statistical prediction and modeling. Several commenters stated that this approach is flawed in that it does not take into account the severity of the threats or the different types or levels of uncertainty associated with various threats.

Lastly, we received comments suggesting that because the Services used both terms—''likely'' and ''probable''—in the proposed regulatory framework, the inconsistent terminology suggests that different meanings are contemplated. Other comments noted that, to the extent that the Services intend ''probable'' to require any greater likelihood than the statutory term ''likely'' from the definition of ''threatened species'' at 16 U.S.C. 1532(20), it would be an impermissible interpretation of the statute, and that neither ''likely'' nor ''probable'' can permissibly be interpreted to require the probability of extinction is ''more likely than not.''

Response: For maximum clarity and consistency with the statutory language, this final rule uses ''likely'' in place of ''probable'' in the relevant sentence of the provision describing the ''foreseeable future.'' We are making this change to avoid any unintended confusion. We further clarify that ''likely,'' in turn, means ''more likely than not.'' This interpretation is supported by case law (*e.g., Alaska Oil and Gas Association* v. *Pritzker,* 840 F.3d 671, 684 (9th Cir. 2016); *Trout Unlimited* v. *Lohn,* 645 F. Supp. 2d 929, 944 (D. Or. 2007); *WWP* v. *FWS,* 535 F.Supp.2d 1173, 1184 & n.3 (D. Idaho 2007). Our foreseeable future framework does not depart from the standards expressed in the 2009 M-Opinion that forms the basis for the framework (M–37021, January 16, 2009); rather, it is fully consistent with that opinion.

Our replacement of the term ''probable'' with ''likely'' within the foreseeable future framework should also eliminate concerns that the Services are impermissibly raising the bar for listing species as threatened to something beyond a threshold of ''likely'' or allowing that classification determinations could be based on anything other than the ''best scientific and commercial data'' standard. We must rely on the ''best scientific and commercial data,'' available, but that data may or may not indicate whether something is likely. To determine an event is likely, we must be able to determine that it is more likely to occur than not after taking the ''best scientific and commercial data'' into account. We will continue to apply the best available scientific and commercial data in making our listing determinations as required under the Act.

We appreciate the recommendation to develop and publish a more detailed policy based on the M-Opinion. However, at this time, we expect that the regulatory framework that we revise in this final regulation after considering public comment, in combination with the supporting text of the existing M-Opinion that further explains the background and reasoning for this longstanding approach, will provide adequate guidance to the Services.

Comment: Some commenters stated that when concluding that a species should be listed, the Services must specifically find ''that both future threats and the species' responses to those threats are probable.'' In contrast, other commenters questioned the Services' proposal to assess the foreseeable future based on both ''future threats'' and the ''species' responses.'' These commenters said this would involve a combined evaluation of both time and impact and instead recommended that the Services separate the concept of foreseeable future from its analysis of the potential threats that the Service can concretely determine will affect the species during that time period. Others cautioned that we should evaluate the species' response at the population level because threats faced by one segment of the population do not necessarily result in a negative response by the population as a whole.

Response: This regulation takes the position that ''the foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely.'' This approach is consistent with the M-Opinion (M–37021, January 16, 2009). It is not sufficient for us to determine that a particular threat is likely; we must

also conclude that the manifestation of that threat is likely to result in a response from the species. By ''species' response'' we mean a change in the species' status after encountering the adverse effects of the threats. We cannot separate the forward-looking analysis of threats from the forward-looking consideration of how those threats are expected to affect the species. To do so would essentially prevent an evaluation of the species' status in the foreseeable future.

With respect to consideration of threats operating in the foreseeable future that affect only a portion or some individuals within the species (*i.e.,* species, subspecies, or DPS) being evaluated for listing, we agree with the commenter that during a status review we must consider how that threat is affecting the particular species at a population or higher level. Listing decisions are ultimately based on a synthesis of all relevant data regarding the status of the species and the threats, taking into consideration how those threats may vary spatially or temporally across individuals or populations of that species.

Comment: Several commenters referred to the Council on Environmental Quality's (CEQ's) implementing regulations for the National Environmental Policy Act (NEPA regulations) at 40 CFR 1502.22, which present discussion of reasonably foreseeable significant adverse impacts. The commenter noted that the NEPA regulations do not define ''reasonably foreseeable,'' but requested that the Services adopt a regulatory definition for foreseeable future rather than apply a subjective, case-by-case approach for defining foreseeable future. Commenters specifically requested we adopt the following ''accepted legal definition'' or something similar: ''A consequence is reasonably foreseeable if it could have been anticipated by an ordinary person of average intelligence as naturally flowing from his actions.'' The commenters stated that a definition along these lines would inject reasonable consideration of common sense into decisions that have such profound impacts on the human environment.

Response: As requested by the commenters, we reviewed the regulations at 40 CFR 1502.22, which address situations in which a Federal agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information. The CEQ NEPA regulations, as noted by the commenter, do not provide a definition for the term ''reasonably foreseeable.'' Overall, we did not find these regulations useful in refining or revising the foreseeable future framework. The Act has a very different purpose and imposes different mandates on the Services than NEPA. Whereas NEPA directs agencies to engage in a process to consider a broad range of potential impacts as a means to guide the agencies in choosing among possible actions, the Act directs specific actions and imposes a mandate that decisions be based on the best available information. We have not adopted the commenters' proposed alternative definition.

Comment: Many commenters stated that they supported the Services' attempt to clarify the term ''foreseeable future'' in the proposed regulations, and many agreed with the proposed qualitative framework in which the foreseeable future would be determined on a case-by-case basis using the best available scientific and commercial data for the particular species. However, some of these commenters stated that the foreseeable future should still be defined in terms of a specific period of time or range of years (*e.g.,* 20–25 years) so that the reasonableness of this particular aspect of threatened listings can be assessed in a meaningful way by the public. In contrast, many other commenters stated that the same time period should be applied as the foreseeable future for all species, because the information on foreseeability is not species dependent. We also received a specific recommendation to use a definition for the foreseeable future that is already in place and used by many indigenous people—the next seven generations of human life.

Response: Using a predetermined number of years or period of time (*e.g.,* seven generations) as a universally applied ''foreseeable future'' for all listings would be arbitrary and would preclude the Services from relying on the best available data. Although some threats might manifest according to certain consistent timeframes, the species' likely response to those stressors is uniquely related to the particular plant or animal's characteristics, status, trends, habitats, and other operative threats. Furthermore, when multiple threats affect a particular species, these threats may have synergistic effects that are also unique to that particular species. Therefore, we do not intend to specify a particular timeframe to be applied universally to all species. However, we will continue to provide information regarding the particular timeframes used when evaluating threats and a species' risk of extinction to the extent possible in all listing decisions. Providing such information facilitates the public's ability to evaluate the reasonableness of the Services' listing decisions.

Comment: Multiple commenters recommended that the Services adopt a more quantitative approach in determining the foreseeable future to reduce uncertainty and litigation and increase transparency and consistency. Many of these commenters also recommended adopting certain quantitative approaches, such as: Defining risk of extinction and uncertainty in a manner similar to approaches used by The Intergovernmental Panel on Climate Change; identifying timeframes over which certain threats (*e.g.,* wind-energy development) or certain population trends for specific taxonomic groups (*e.g.,* salmonids) are foreseeable; and using previous listing decisions to identify any consistent patterns in the time horizons used for certain types of threats or taxa.

Response: When quantitative methods are available and consistent with best practices, we use them along with other available data and methods. However, the 'best available data' standard under the Act does not necessarily require use of quantitative methods and data, and we are not specifying particular quantitative methods in the regulations we are finalizing in this document.

Comment: Several commenters stated that to assess the danger of extinction, and thus be able to list a species as threatened, the Services must first identify the extinction threshold for that species and the likelihood of reaching that point in the future. Commenters noted that NMFS has explained previously that ''[a] species is 'threatened' if it exhibits a trajectory indicating that in the foreseeable future it is likely to be at or near a qualitative extinction threshold below which stochastic/depensatory processes dominate and extinction is expected.'' (NMFS, Interim Protocol for Conducting Endangered Species Act Status Reviews at 12 (2007).) Commenters also stated that in cases where the Services lack the data or ability to identify future population trends, assess the impact of population declines on the species' overall population status, or establish an extinction threshold, it is not possible to determine or foresee the likelihood of future extinction for purposes of the listing determination. A commenter noted that Congress explained that the threatened classification was included to give effect to the Secretary's ability to

forecast population trends (S. Rep. No. 93–307 at 3 (July 1, 1973)).

Response: The Services do not need to identify an extinction threshold or the likelihood of reaching that threshold in the future in order to determine whether a species meets the definition of a threatened species. Rather than wait for such data and analyses to become available, the Services are required to apply the best available data to make a determination whether the species meets the definition of a ''threatened species'' or an ''endangered species'' as a result of any of the factors outlined in section 4(a)(1) of the Act. Secondly, predicting extinction thresholds requires certain data regarding population parameters and environmental variables, and it requires the use of appropriate models. Modeling extinction thresholds is often not possible with the nature or type of data available.

Comment: A commenter recommended that the Services formally define ''in danger of extinction'' and apply the definitions and analysis in the remanded memorandum that FWS filed with the United States District Court for the District of Columbia in *In re: Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation,* No. 08–mc–00764–EGS, Doc. No. 237 (Dec. 22, 2010) (''Polar Bear memo'').

Response: FWS developed the Polar Bear memo after the court in that case held that the definition of ''endangered species'' under the Act is ambiguous and ordered the agency to provide on remand an additional explanation for the legal basis of the agency's decision to list the polar bear as a threatened species. To develop the Polar Bear memo, FWS surveyed the history of the agency's listing determinations in light of the text of the Act and the applicable legislative history and encapsulated FWS's overall, general understanding of the phrase ''in danger of extinction'' as ''currently on the brink of extinction in the wild.'' Polar Bear memo at 3. FWS noted that it does not employ its general understanding in a narrow or inflexible way and that a species need not be likely to become extinct to be ''on the brink of extinction.'' *Id.* The memo also described four categories of circumstances in which FWS had found species to be ''currently on the brink of extinction in the wild.'' *Id.* at 4–6.

Although the Polar Bear memo is not binding and does not have the force of law, *see Alliance for the Wild Rockies* v. *Zinke,* 265 F. Supp. 3d 1161, 1180–81 (D. Mont. 2017), it remains a statement by FWS as to what may constitute ''in danger of extinction.'' FWS stated explicitly in the memo that it applied only to the listing decision for the polar bear. Polar bear memo at 1 n.1. FWS's general understanding, the historical survey of its listing decisions in the memo, and the associated discussion in the Polar Bear memo can still serve as a useful starting point for analyzing whether a species is in danger of extinction.

As the Polar Bear memo noted, FWS has not promulgated a binding interpretation of ''in danger of extinction,'' due in part to the contextual and fact-dependent nature of listing determinations. *Id.* at 3. The Services continue to conclude that codification of FWS's general understanding of ''in danger of extinction'' is not necessary at this time.

Comment: We received comments expressing disagreement with the Services' proposed framework for foreseeable future in that it allows for different ''foreseeable futures'' depending on the particular threat being considered. Instead, the commenter recommended that the Services select a single number of years or range of years in which to determine the future status of the species. The commenter stated that if the Services adopt varying foreseeable futures for the different listing factors for a single species, they are conceivably assessing whether that species is likely to become an endangered species based on fewer than all the listing factors. While the Act allows the Service to list a species based on a single factor, it does not allow the Service to disregard any of the factors in making the holistic determination whether a species has ''become an endangered species.'' In addition, the listing factors assess both positive and negative impacts on the status of the species. So being unable to assess certain listing factors at the end of a long foreseeable future for other listing factors means the Service is ignoring potentially beneficial conditions, for example, the existing regulatory mechanisms.

Response: We appreciate the commenter's concern and clarify in this response that, although there may be different degrees of ''foreseeability'' with respect to particular threats and their impacts on the species, we ultimately base listing determinations on consideration of all of the available data and a review of all of the section 4(a)(1) factors. As stated in the M-Opinion, ''Although the Secretary's conclusion as to the future status of a species may be based on reliable predictions with respect to multiple trends and threats over different periods of time or even threats without specific time periods associated with them, the final conclusion is a synthesis of that information.'' (M–37021, January 16, 2009). The Services have been following this approach for nearly a decade, and courts have found it to be reasonable and appropriate (*See, e.g., In Re Polar Bear Endangered Species Act Listing and Section 4(d) Rule Litigation,* 709 F.3d 1, 15–16 (D.C. Cir. 2013). The approach reflects the reality that there is a variation among the kinds and levels of information the Services typically have available when assessing specific threats. The approach allows the Services to comprehensively consider all that is known about the threats acting on the species, and the listing determination itself is based on a synthesis of that information. No information is disregarded merely because it relates to a time horizon that is different from that associated with other threats. As a matter of practice, the Services consider applicable data regarding both negative (*e.g.,* poaching) and positive (*e.g.,* enforcement efforts to reduce poaching) factors when making their listing determinations and will continue to do so under the ''foreseeable future'' framework being finalized in this rule.

Comment: A commenter stated that the discussion included in the proposed rule on data and use of models is unclear. The commenter specifically pointed to the statements in the proposed rule that the foreseeable future can extend only as far as the Services can reasonably depend on the available data to formulate a reliable prediction and avoid speculation and preconception, and that ''in cases where the available data allow for quantitative modeling or projection, the time horizon presented in these analyses does not necessarily dictate what constitutes the 'foreseeable future' or set the specific threshold for determining when a species may be in danger of extinction.'' The commenter said this seems to be contradictory, because if there is enough information to provide a reliable prediction that avoids speculation, based on quantitative modeling or projection, it seems that the Services should consider that as a ''foreseeable future.'' The commenter said this phrasing seems to indicate that models may show specific time periods, but that it can still be ignored. The commenter said all data and information should be reviewed and interpreted, including modeling.

Response: We agree that, if available and reliable, quantified studies or analyses should not be ignored, and our proposed rule was not meant to imply otherwise. Our intention with the particular language quoted by the

commenter was to indicate that the existence of a quantitative model or projection will not necessarily determine the foreseeable future in all cases or situations. A particular model or analysis may in fact be used by the Services to determine the period of time that can be considered the foreseeable future. However, this will not always be the case. In some instances, a model's time horizon may fall short of how far into the future the Services can foresee; and in other instances, a model may extend out to a point at which the model's predictions become speculative or highly uncertain. In both cases, the time period covered by the particular model would not dictate the time period for what the Services consider to be ''foreseeable.'' In addition, even if a model is considered reliable, it may not be possible to limit the time horizon considered in the status review based on what one particular model or analysis indicates as a reasonable period of time. When we review a species' status over the foreseeable future, we must take all available data into account. In other words, while we fully agree that reliable predictions based on quantitative models should not be ignored, those quantitative models may not in themselves establish what constitutes the ''foreseeable future'' for the entire species or every threat. They may simply reflect possible, but not likely, outcomes.

Comment: Multiple commenters stated that foreseeable-future timeframes are very uncertain with respect to forecasted climate-change impacts and that additional clarifications or modifications to the proposed ''foreseeable future'' framework are needed. Various commenters stated that there is too much uncertainty associated with foreseeable futures that extend too far (*e.g.,* 100 years) and that the foreseeable future should be shorter (*e.g.,* 10 years, 25–30 years). Commenters, citing Congressional reports, stated that Congress intended the foreseeable future to be in the near future. Commenters provided various suggested approaches or parameters that would dictate how far the foreseeable future could extend, such as using three generation lengths for long-lived species, and considering threats in light of the biology of the species (*e.g.,* long generation versus short generation lengths). Commenters stated that if predictions are too speculative, then the Services cannot give the species the benefit of the doubt and must acknowledge that listing the species is not warranted. Lastly, commenters requested that NMFS align its procedures for determining foreseeable future with those of the FWS, particularly regarding incorporation of uncertainty in climate models and other elements.

Response: We acknowledge that levels of uncertainty can increase the further into the future that climate-change impacts are projected. The magnitude of this increase in uncertainty over time will vary from case to case depending on the available data for the particular issues at hand. Nevertheless, we must carefully consider the available data and the levels of uncertainty, make a reasoned conclusion, and explain that conclusion in a transparent way in our proposed and final listing determinations. Our regulatory framework for the ''foreseeable future'' does not undermine these requirements.

For these reasons, we do not agree that a predetermined period of years is appropriate in order to minimize uncertainty when making threatened species listing determinations. Including such a time limit in the foreseeable future regulation would be arbitrary and would preclude the Services from meeting the best-available-data standard required under section 4 of the Act. Furthermore, as noted in the M-Opinion, Congress purposefully did not set a timeframe for the Secretary's consideration of whether a species was likely to become an endangered species, nor did Congress intend that the Secretary set a uniform timeframe. Thus, we do not intend to specify one in the regulatory framework being finalized in this document.

We conclude that it is generally appropriate to consider the foreseeable future in light of the particular species' biology. This principle is explicitly embedded in the regulatory framework for the foreseeable future, which states: ''The Services will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability.''

We agree that listing decisions cannot be based on speculation. As stated in our proposed rule, ''the foreseeable future can extend only as far as the Services can reasonably depend on the available data to formulate a reliable prediction and avoid speculation and preconception.'' 83 FR 35195, 35196, July 25, 2018. Our ''foreseeable future'' framework is explicit in this respect, because it states that foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats ''are likely.'' However, we note that as long as that standard is met, we are not required to wait to make listing determinations until better or more-concrete science is available, and that the Act requires that we base our decision on the best *available* data. *See, e.g., San Luis & Delta-Mendota Water Authority* v. *Jewell,* 747 F.3d 581, 602 (9th Cir. 2014) (''best available'' standard does not require perfection or best information *possible*) (*citing Building Indus. Ass'n* v. *Norton,* 247 F.3d 1241, 1246 (D.C. Cir. 2001)); *Alaska* v. *Lubchenco,* 825 F. Supp. 2d 209, 223 (D.D.C. 2011) (same); *Maine* v. *Norton,* 257 F. Supp. 2d 357, 389 (D. Me. 2003) (noting that the ''best available'' standard ''is not a standard of absolute certainty''). By the same token, we acknowledge that the precautionary principle does not apply to listing determinations, so we do not list species merely as a precaution if there is not reliable evidence indicating that the species meets the definition of a ''threatened species.'' *E.g., Center for Biological Diversity* v. *Lubchenco,* 758 F. Supp. 2d 945, 955 (N.D. Cal. 2010) (finding the ''benefit of the doubt'' concept does not apply in the listing context); *Trout Unlimited* v. *Lohn,* 645 F. Supp. 2d 929, 947 (D. Or. 2007).

Lastly, as the two Services agree to these principles and have worked cooperatively to develop this rule, we find that the two Services have already largely aligned their approaches. Any apparent differences in outcomes stem from species-specific considerations rather than from having different interpretations of the statute.

Comment: A few commenters stated that, although a uniform ''foreseeable future'' time period should not be applied to all species, the Services must identify the period of foreseeability for each operative threat and the species' response to that threat. A commenter also stated the Services should be specific regarding what time period they are using for a particular decision and that, absent that information, their decisions will be extremely unclear, unpredictable, and difficult to review.

Response: We agree that status reviews and listing determinations should transparently discuss the time horizons over which any analyses were conducted, threats were evaluated, and/or species' responses were projected. However, it is not always possible or even necessary in every circumstance to define the ''foreseeable future'' as a particular number of years. As stated in the M-Opinion: ''In some cases, quantifying the foreseeable future in terms of years may add rigor and transparency to the Secretary's analysis

if such information is available. Such definitive quantification, however, is rarely possible and not required for a 'foreseeable future' analysis.'' (M–37021, January 16, 2009). Ultimately, although the Secretary has broad discretion to determine what is foreseeable, this discretion is exercised based on the best scientific and commercial data available and is subject to review in accordance with the applicable standards of the Act and the Administrative Procedure Act.

Comment: Multiple commenters stated that the Services must modify the definition of the ''foreseeable future'' such that healthy, viable species are not listed as threatened species. Another commenter stated that the Services should only rarely list currently viable, stable species as threatened so that their resources can be more appropriately focused on species already in need of conservation. Commenters also stated that the Services should not list healthy species, like polar bears and ice seals, based on speculation or on the possibility of a future threat. Multiple commenters stated that Congress intended that only species experiencing current threats that are affecting their population numbers may be considered for listing and stated that a species must already be experiencing the effects of a threat and be ''depleted in numbers'' to be considered for listing as threatened. Commenters also asserted that the Ninth Circuit's interpretation in *Alaska Oil & Gas Assoc.* v. *Pritzker,* 840 F.3d 671, 683 (9th Cir. 2016) was an illogical result of the potential application of the Act to every species based on the possibility that climate-related threats may pose some effect at some remote future time. Commenters noted this Congressional intent is also reflected by the definition of ''conservation'' in section 3 of the Act, which they noted clearly does not apply to a healthy species that is not being affected by present threats to its existence because it would not be possible to ''bring'' that species ''to the point'' where the protections of the Act ''are no longer necessary.''

Response: We agree that we cannot list a species as threatened due to speculation about future declines of that species; however, it does not follow that listing a species as threatened under the Act requires that a decline has already begun. If the best available scientific and commercial data allow us to make a reliable prediction (as opposed to speculating) that a not-yet-begun decline makes it likely that the species will become in danger of extinction, then that species meets the definition of a threatened species. In other words, the Services need not wait until a species has reached a particular tipping point if the best available data indicate the threats the species currently faces will result in it likely becoming an endangered species within the foreseeable future. Furthermore, the Services cannot ignore the threats a species faces even if the species has not yet begun to decline. Some species may also exhibit nonlinear changes in their population levels. For example, some species are vulnerable, due to demographic factors affecting their abundance, productivity, or other reasons, to sudden ecological regime shifts, which can cause population collapse even though population declines had not been previously evident.

Lastly, we do not agree with the suggestion that the definition of ''conservation'' in section 3 of the Act reflects an intention by Congress that only species with declining abundances be listed under the Act. The Act defines ''conserve,'' ''conserving,'' and ''conservation'' as ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' A species that is properly listed due to reliable predictions of future declines can benefit from conservation methods and procedures that will forestall or ameliorate that decline. If successful, such conservation measures will eventually no longer be necessary, the species will no longer be ''likely to become an endangered species,'' and the species can be delisted. Listing a species as threatened due to future declines that are foreseeable is thus completely compatible with the definition of ''conservation.''

Comment: Multiple commenters expressed concern that under the proposed ''foreseeable future'' framework the Services would consider climate change as a hypothetical and not a ''probable'' threat or would otherwise ignore the best available science on climate change. Commenters stated that under the proposed definition of ''foreseeable future,'' the Services could arbitrarily cite climate change as a justification to avoid species protections if none of the specific projections reaches the 50 percent ''probability'' threshold due to uncertainty stemming from environmental variability. They further stated that the regulations should instead be explicit that the best available science regarding the ''foreseeable future'' must include climate-change and ocean-acidification projections as well as any studies regarding what those projections will mean for both specific species and larger ecosystems. The commenters stated that the Services must consider the associated ranges of probabilities and uncertainties as best science even though they do not present a single likelihood of any particular impact. Commenters further noted that oftentimes there is high confidence in the directionality of a climate trend or impact (*e.g.,* sea-level rise), even when there is lower confidence in the rate or ultimate magnitude of the change, and that under the proposed definition of ''foreseeable future'' it would be possible to dismiss such projections by focusing on the uncertainty in rate instead of the certainty in trend.

Response: Consistent with our longstanding practice, in all classification decisions we will consider the best available science and evaluate impacts to the species that may result from changing climate within the foreseeable future. Also consistent with our standard practice and per the Act's section 4(a)(1) factors for listing, we will consider what the particular climate-related predictions mean in terms of impacts on the species as well as impacts on the larger ecosystem. In reviewing and applying the best available data in our foreseeable future framework, we will also consider the ranges of probabilities and uncertainties associated with the available data, and we will not arbitrarily dismiss reliable aspects of various climate change predictions or projections (*e.g.,* directionality) even if other aspects (*e.g.,* rate of change) have greater levels of uncertainty. We will take all of the available climate change data into consideration when making a reasonable determination regarding the foreseeable future and the status of the species in the foreseeable future.

Comment: Numerous commenters expressed concern regarding how the Services will address uncertainty and reliability under the proposed foreseeable future framework when models are used. Commenters noted that models used to project future conditions are often flawed by the inclusion of too few factors, or the exclusion of factors that may be unknown or not fully known, and that models can be manipulated. Therefore, commenters recommended that explanatory language should state that models must be identified as such and data inputs used to construct them must be listed, and that model outputs do not constitute data in and of themselves. Other commenters stated that models often cannot provide reliable

predictions of future conditions at narrow geographical scales or on short time horizons sufficient to support specific conclusions about the future condition of species or habitat at precise locations. The commenters specifically noted that, in withdrawing their proposed rule to list the wolverine as threatened, the FWS recognized the significant disagreement and uncertainty regarding the accuracy of localized climate change projections for a species' habitat or population persistence (79 FR 47522, 47533; August 13, 2014). In contrast, other commenters stated the Services can rely on models even if they are not perfect, and that, under the proposed approach, species will impermissibly be left without protection until the science is developed enough to establish with ''reasonable certainty'' that they will be in danger of extinction.

Response: We agree that, when models are applied in a status review, we should provide detailed, explanatory language to describe the particular data sources and inputs used to construct the model. We will also strive to explicitly describe the assumptions, limitations, and relevant measures of uncertainty associated with the particular models. However, it is important to note that models can often provide useful and robust predictions even in the absence of certain variables or data. Thus, the Services may consider, among other sources of scientific data, models that are not ''perfect'' or do not indicate a ''reasonable certainty'' of a species being in danger of extinction. Indeed, nothing in the framework we have set forth for determining the ''foreseeable future'' we adopt is designed or intended to require ''reasonable certainty'' of a species being in danger of extinction in the foreseeable future before it may be listed as threatened. Models are analytical tools that can be applied to better understand complex datasets. We will continue to use various types of analytical tools, as appropriate and as transparently as possible, when conducting status reviews. We conclude that the requirement to use the ''best available'' data means that we cannot insist that information must be free from all uncertainty, and further agree that the Act's protections should not be withheld until a species' status has declined to the point that the future risk of extinction is certain.

With respect to the comment regarding the degree of spatial and temporal precision of models, we agree that models will not always support specific conclusions about the future condition of species or habitat at fine scales or in precise locations. As stated previously, in reaching any conclusions regarding the foreseeable future or the extinction risk of a particular species, we will apply model results only to the extent that we have determined they are the best available data and they are relevant.

Comment: A few commenters stated that ''professional judgment'' is ambiguous terminology and there is no clear indication on when use of professional judgment is considered appropriate. Some commenters expressed concern that subjectivity and opinion would take the place of data where gaps exist in the available science, and one commenter noted that the use of best professional judgment does not relieve the Services of their statutory duty to make listing determinations ''solely on the basis of the best scientific and commercial data available.'' One commenter recommended adopting guidance requiring that experts provide their credentials demonstrating their expertise and that their detailed recommendations be made available to the public.

Response: These comments refer to a discussion in the proposed rule regarding the types of data that may inform what is ''foreseeable.'' Specifically, we stated that, depending on the nature and quality of the available data, ''predictions regarding the future status of a particular species may be based on analyses that range in form from quantitative population-viability models and modelling of threats to qualitative analyses describing how threats will affect the status of the species. In some circumstances, such analyses may include reliance on the exercise of professional judgment by experts where appropriate.'' (83 FR 35193, July 25, 2018).

This discussion was intended to clarify that the data underlying any ''foreseeable future'' could take several forms and that it would not, for example, exclusively depend on quantitative analysis. Professional judgment is not used in place of the best available scientific or commercial data; it is used when there are gaps in such data that require scientific interpretation to address. We note that when professional judgment is applied, it should be done transparently and in accordance with applicable standards.

Comment: Multiple commenters raised concerns regarding what constitutes the ''best available scientific and commercial data'' in establishing a probable foreseeable future and requested we further clarify the term and its use. Several commenters stated it is imperative that the data considered during the listing process be made available to the public, and that any assumptions made are disclosed in a transparent manner. One commenter stated that the FWS has inconsistently applied standards for what constitutes the best available science and suggested that, to avoid interference with the application of the best available data, the words ''the Services'' should be replaced with ''the Services' biologists.'' We also received a request to insert the words ''scientific and commercial'' into the phrase ''best available data'' within the foreseeable future regulatory text. Lastly one commenter noted that the proposed rule fails to provide clarifying language regarding what constitutes ''commercial data'' and expressed concern that this could open the door to an over-reliance on the use of potentially biased and non-peer-reviewed data for listing and delisting decisions.

Response: Multiple requirements have already been established to guide the Services' use and application of the best available data and provide sufficient guidance on this topic. For example, the Information Quality Act (IQA, Pub. L. 106–554), agency policy directives for implementing the IQA (*e.g.,* NMFS Policy Directive 04–108, June 2012, and FWS Information Quality Guidelines, June 2012; and the Office of Management and Budget's (OMB's) Final Information Quality Bulletin for Peer Review (M–05–03, December 16, 2004) guide the Services in ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the Services. In addition, the Services comply with the policy memorandum issued on February 22, 2013, by the Office of Science and Technology Policy regarding public access to federally funded research results. That memorandum establishes a set of principles to guide Federal agencies in providing access to and archiving results of Federal or federally funded research. Lastly, as a matter of practice, the Services' status reviews are subjected to both peer and public review before they are relied upon in a final listing determination. Overall, we find these existing requirements sufficient to ensure the quality, integrity, and accessibility of the data used by the Services in support of their listing decisions.

To ensure status reviews and listing decisions are transparently based on the best available scientific and commercial data, we fully disclose any assumptions made. The Services consider this to be a standard best practice. Additionally, the Services make available cited

literature that is used in listing rules and that are not already publicly available, taking into account issues of intellectual property law, copyright, and open access.

We decline to specify in our regulations that the Services' biologists make any determination of what constitutes the best available data. The proposed wording change is both unnecessary and in conflict with the statute. In practice, it is the Services' biologists that gather, review, and synthesize the best available data, but as the statute clearly requires, the Secretary must make the ultimate determination regarding whether species meet the definition of a threatened or endangered species.

Likewise, we decline to make the requested insertion of the words ''scientific and commercial'' into the regulatory framework for the foreseeable future, which we had originally omitted for conciseness and readability. The addition of these words is unnecessary, because the Services are held to the requirement to rely on the best ''scientific and commercial data'' under section 4(b)(1)(A) of the Act. The regulatory foreseeable future framework does not alter this statutory requirement in any way.

We also decline to add clarifying language to the regulations regarding the term ''commercial data,'' and we disagree that the absence of such language may lead to reliance on potentially biased and non-peer-reviewed data for listing and delisting decisions. The term ''commercial data'' is used in the statute and, as clearly indicated by the legislative history, this term refers to trade data such as commercial harvest and landings data. See H.R. Rep. 97–657 (H.R. Rep. No. 567, 97th Cong., 2nd Sess. 1982, 1982 U.S.C.C.A.N. 2807, 1982 WL 25083) at 20. While those data are not subject to a peer review process equivalent to the process applied to published scientific literature articles, the statute clearly allows the Services to consider them. When doing so, the Services apply their own assessment of the nature, quality, and limitations of the data, and use the data only to the extent appropriate. Furthermore, when commercial data are used, the Services discuss their application and interpretation of the data transparently and subject that interpretation to both peer and public review.

Comment: Some commenters noted that, while they generally support the proposed changes to the regulations regarding the foreseeable future, the general framework for making threatened determinations would benefit from additional specific criteria. In particular, they requested that the framework require that the best available scientific and commercial data demonstrate that listing the species as threatened would have a measurable beneficial effect.

Response: The suggested change is not consistent with the statute. Section 4(a)(1) sets out the factors by which the Secretaries may determine a species is threatened or endangered. These factors do not include a category that allows for or requires consideration of the beneficial effect of the listing. Therefore, we have no basis for requiring that a species listing have some measurable benefit in order for that species to receive the protections of the Act.

Comment: Some commenters stated that the Services should provide additional clarification on how they will address future projections associated with a species' life-history characteristics and demographic factors, as well as divergent projections associated with each threat-projection timeframe. The commenters stated that the Services should further explain how species' responses will be predicted and should explicitly state that the adaptability and resilience of a species to each operative threat will also be considered. The commenters specifically noted that adaptability and resilience are important considerations when contemplating the risk of extinction in relation to loss of range. Another commenter stated that, while they appreciate that the proposed foreseeable future framework takes into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability, they recommended adding additional considerations, such as changes in climatic characteristics, phenology, geographic ranges, and home range sizes of some species, which can be particularly informative in the face of global changes to climate for which the only reference condition is the past.

Response: As we indicated in the proposed rule, how we analyze and predict species' responses to threats will vary from case to case. For example, in data-rich cases, population viability analyses may be used to predict species' responses, whereas in data-poor situations, we will likely conduct a qualitative risk assessment. In all cases, species' likely responses to particular threats will be evaluated using the best data available for that species.

We can and do take factors such as climate, adaptability, resilience, phenology, and home-range sizes into account when assessing a species' status into the foreseeable future. It is our longstanding practice to take such types of information into account, as appropriate, when conducting status reviews. The foreseeable future framework refers to several categories of considerations (*i.e.,* ''such as life-history characteristics, threat-projection timeframes, and environmental variability'') as examples of relevant factors that will inform how far into the future the foreseeable future extends for a particular species. The framework does not exclude other relevant considerations. Thus, we conclude that additional revisions to foreseeable future framework are not necessary.

Comments on Delisting

Comment: Several commenters agreed with the proposal that the criteria for determining whether a species qualifies for protection under the Act are the same whether the context is a potential decision to delist or the initial decision whether to list a species. Numerous commenters stated that the standard for delisting a species should be higher than for listing a species; thus, the Services have a higher burden in proving that a listed species has recovered such that it can be delisted than they have in listing the species in the first instance. Further, some stated that under the precautionary principle embodied in the Act, scientific uncertainty must be considered differently in the context of delistings and downlistings versus initial listings. Many commenters stated that the precautionary principle embodied in the Act necessarily means that, once a species is listed, a subsequent reversal of that conclusion must be specifically supported by evidence that explains why the species no longer meets the definition associated with its prior listing.

Response: The standard for a decision to delist a species is the same as the standard for a decision not to list it in the first instance. This approach is consistent with the statute, under which the five-factor analysis in section 4(a)(1) and the definitions of ''endangered species'' and ''threatened species'' in sections 3(6) and 3(20) establish the parameters for both listing and delisting determinations without distinguishing between them. The Services determine whether species meet the definitions of a ''threatened species'' or an ''endangered species'' based on the best scientific and commercial data available. We must consider the best available scientific data the same way regardless of whether it is in the context of delistings and downlistings versus initial listings. This interpretation is

consistent with the Services' longstanding practice and the decision in *Friends of Blackwater* v. *Salazar,* 691 F.3d 428 (D.C. Cir. 2012). That decision confirms that, when reviewing whether a listed species should be delisted, the Services must apply the factors in section 4(a) of the Act. 691 F.3d at 433 (upholding FWS's decision to delist the West Virginia northern flying squirrel because the agency was not required to demonstrate that all of the recovery plan criteria had been met before it could delist the species and it was reasonable to construe the recovery plan as predictive of the delisting analysis rather than controlling it). In that case, the court held that ''Section 4(a)(1) of the Act provides the Secretary 'shall' consider the five statutory factors when determining whether a species is endangered, and section 4(c) makes clear that a decision to delist 'shall be made in accordance' with the same five factors.'' *Id.* at 432. Therefore, we have finalized the proposed change.

Comment: Some commenters stated that the only ''standard'' articulated in the proposed regulations is that the species ''shall be listed or reclassified if the Secretary determines on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species meets the definition of an endangered species or a threatened species.'' Further, they stated that a decision to delist a species is not made against a blank slate. Rather, it is made in light of a prior factual determination by the Service. Therefore, the Services must explain and factually substantiate the departure from that prior determination. In making a new evaluation of a species' status, the Services cannot base their decision only on the available scientific and commercial data but must also consider their prior determination and substantiate the reasons for departing from their prior conclusions. An agency must provide ''a more detailed justification'' when it makes a decision that ''rests upon factual findings that contradict'' its prior findings. A failure to do so violates the Administrative Procedure Act.

Response: The Act defines ''threatened species'' and ''endangered species'' and directs the Services to make determinations regarding whether a species is threatened or endangered based upon the best available scientific and commercial data. This determination requires the Services to take into account all material in the record, including prior findings and the discussion of facts supporting those findings, and discuss how the newly available information has led to different conclusions in a transparent manner.

The underlying obligation of the Services to articulate a rational connection between their decisions and facts in the record is the same regardless of the context of the determination being made (listing or delisting). Of course, where there is substantial information in the record that a listed species is likely to face a continuing threat, this responsibility is particularly acute. *See Greater Yellowstone Coalition, Inc.* v. *Servheen,* 665 F.3d 1015, 1030 (9th Cir. 2011) (holding that, in particular circumstance where strong evidence of continuing threat to species was documented in the record, the Act's policy of ''institutionalized caution'' required that FWS explain why delisting the species was appropriate in face of the uncertainty regarding the extent of the threat).

Comment: Several commenters stated that the removal of recovery as one of the reasons for delisting is in direct conflict with the main stated purpose of the Act and will allow the Services to delist species before they are recovered. They also stated that the Services have failed to adequately explain the purpose of removing the word ''recovery'' from § 424.11(d)(2). They noted the only reasoning provided in the proposed rule was to align with statutory definitions of endangered and threatened species. The Services did not explain how removing this word creates better alignment.

Response: We note that the Act does not use the term 'recovery' or 'recovered' when referring to removing a species from the list. Rather, a species is removed from the list when it does not meet the definition of an endangered species or threatened species. Furthermore, the Services do not agree that this change will allow species to be delisted before they are recovered. The Services will continue to use the best scientific and commercial data available to make determinations as to whether species meet the definition of an endangered species or a threatened species. If a review of a listed species indicates a species does not meet either definition, the Services will propose the species for delisting. Likewise if, following a review, a listed species is determined to still meet the definition of an endangered or a threatened species, the Services would not propose the species for delisting. Thus, this revision in no way conflicts with the intention of the Act.

The Services removed the reference to ''recovery'' from § 424.11(d)(2) because the existing regulatory language, which was intended to provide examples of when a species should be removed from the lists, has been, in some instances, misinterpreted as establishing criteria for delisting. Although we are removing the word ''recovery'' from this section, the language will continue to include species that have recovered, because recovered species would no longer meet the definition of either an ''endangered species'' or a ''threatened species.'' However, the Services reiterate that the goal of the Act and the Services is to recover threatened and endangered species.

Comment: Some commenters objected to the removal of recovery from § 424.11 and stated the proposed rule appeared to circumvent recovery plans and improperly make section 4(f) of the Act meaningless. Additionally, they stated that removing this provision disconnects recovery from species recovery plans that in turn guide State-level actions and are effective means to address recovery. They argued the Services should include a discussion of recovery and recovery plans as part of this change and consider if protections are in place to support continued recovery of the species into the future.

Response: This change does not make recovery meaningless. Section 4(f) requires the development of recovery plans for most listed species. Recovery plans are a key component in conservation planning and provide an important roadmap for a species' recovery. This provision does not undermine the importance or effectiveness of recovery plans. Recovery plans will continue to guide the Services' recovery efforts.

Comment: A commenter expressed concern that the proposed addition of new paragraph (e) to § 424.11 would circumvent the requirement that delisting decisions must be made based on the best science and data available at the time of the decision. The commenter argued that the proposed revisions would allow for delisting based solely upon achieving any recovery criteria identified at the time of listing, even if this occurs prior to the attainment of the plan's recovery criteria and without regard to current information.

Response: The Services are required to make delisting determinations based upon the best scientific and commercial data available at the time the determination is made. When the Services determine whether a species meets the definition of a ''threatened species'' or ''endangered species,'' they will rely upon the best available data. The Services will continue to review all relevant information when making a delisting determination, including whether the recovery criteria have been achieved. Recovery plans provide

important guidance to the Services, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, but they are not regulatory documents. A decision to revise the status of a species or remove a species from the List is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

Comment: Some commenters suggested that the Services clarify that delisting decisions are not contingent upon the satisfaction of a recovery plan. Others requested that the proposed revision at 50 CFR 424.11 also explicitly specify that species should be considered for delisting when the original recovery objective (*i.e.,* target population goal) in the species' recovery plan is met.

Response: The Services conclude that further clarification in this regard is not necessary. As noted in the proposed rule, the Services' intention is to clarify that the standard for whether a species merits protection under the Act should be applied consistently whether the context is potential listing or potential delisting. Thus, delisting decisions are not contingent upon the satisfaction of a recovery plan for that species. This interpretation is consistent with the Services' longstanding practice and the decision in *Friends of Blackwater* v. *Salazar,* 691 F.3d 428 (D.C. Cir. 2012). That decision confirms that, when reviewing whether a listed species should be delisted, the Services must apply the factors in section 4(a) of the Act. 691 F.3d at 433 (upholding FWS's decision to delist the West Virginia northern flying squirrel because the agency was not required to demonstrate that all of the recovery plan criteria had been met before it could delist the species and it was reasonable to construe the recovery plan as predictive of the delisting analysis rather than controlling it). In that case, the court held that ''Section 4(a)(1) of the Act provides the Secretary 'shall' consider the five statutory factors when determining whether a species is endangered, and section 4(c) makes clear that a decision to delist 'shall be made in accordance' with the same five factors.'' *Id.* at 432. The Services will delist a species when, based upon the best available scientific and commercial data, they determine the species no longer meets the definition of a threatened or endangered species.

Comment: Several commenters stated that removing the requirement that the data substantiate that the species is no longer endangered or threatened lowers the bar for delisting a species and will promote delisting species before they are actually recovered. Several commenters stated that the Services' proposed revisions to drop the requirement that data ''substantiate'' any delisting decision would strip listed species of the Act's protections and contravene the policy of ''institutionalized caution'' Congress adopted in enacting the Act. *Tenn. Valley Auth.* v. *Hill,* 437 U.S. at 194.

Response: The Services do not agree that removing this language will lower the bar for delisting species and allow them to be delisted before they have recovered. As required by the Act, the Services make determinations as to whether species warrant listing, including decisions to remove species from the lists of threatened or endangered species, based on the best scientific and commercial data available. The Services will not proceed with a delisting determination unless the best scientific and commercial data support that conclusion. Because the statutory standard for delisting is whether a species meets the definition of a threatened or endangered species based on the best scientific and commercial data available, it is not necessary to have a separate requirement that the data substantiate that the species is no longer threatened or endangered. Therefore, removing the requirement that the data substantiate that the species is no longer endangered or threatened does not contravene the policy of institutionalized caution because, before making a determination to delist a species, the Services are already required to assess the best scientific and commercial data available about the status of the species, threats it may face, the adequacy of regulatory mechanisms, and the effectiveness of any conservation efforts.

Comment: Some commenters stated that the Services inappropriately propose to be allowed to delist a species by simply reinterpreting data that were used to make the original listing determination.

Response: In proposing this change, the Services attempted to address any ambiguities in the regulatory text by simplifying this provision and returning to the underlying statutory standard. In order to delist a species, the Services must evaluate the best scientific and commercial data available at the time a determination to delist a species is made. They must review all information that is available and may not limit their inquiry to the interpretation of data that were used to make the original listing determination. However, if the best available data supports reinterpreting the data used in the original listing determination, the Services may do so.

Comment: Several commenters stated that the proposed revision to the regulation addressing delisting based on extinction provides no rationale for weakening the informational requirements imposed by the current regulations. They stated that the language describing the period of time that must pass before a species can be delisted due to extinction should be retained because it allows for consistent implementation of the Act and provides clarity to the public. Additionally, some commenters stated that the proposed changes stating that evidence may include survey information is inconsistent with the precautionary approach that should be used when protecting imperiled species. Others stated that criteria should be developed for determining ''extinction'' or defining the term ''extinct'' for purposes of removing a species from the list due to extinction.

Response: The Services modified the text in this section because the Services' conclusion that a species is extinct will be based on the best scientific and commercial data available, as required under section 4(b)(1)(A). That decision may include, among other things, survey data and information regarding the period since the last documented occurrence or sighting of the species. We will make each determination on a case-by-case basis, considering the species-specific biological evidence for species extinction. We find it is more consistent with the statute to acknowledge this overarching obligation that all classification decisions must use the best available scientific and commercial data than to highlight only certain kinds of information as the current regulatory provision does. A determination that a species is ''extinct'' will be based on the best scientific and commercial data available, as required under section 4(b)(1)(A), according to the common understanding of the term.

Comment: Some commenters supported the provision related to delisting due to extinction, but requested that the Services add another section to this provision that would state that, when a species that was extinct in one area is reintroduced into an area, the reintroduced species can be managed to protect the new ecosystem that developed in the absence of the extinct species.

Response: The Services decline to add the proposed section. There are other

provisions of the Act, such as section 10(j), that govern the introduction of populations back into areas where they no longer exist, and that issue is therefore beyond the scope of the regulations implementing section 4 of the Act.

Comment: Some commenters requested the Services add the term ''extirpated'' in addition to ''extinct.'' They suggested this addition would be useful in cases where a particular species may be extirpated from a region or local area without being fully extinct from an adjoining State or region.

Response: The Services decline to add ''extirpated'' to this section of the regulations. This provision of the regulations, and the Services' modifications to this section of the regulations, govern factors considered in delisting species. Extirpation of a population of a listed species from a particular area is not the equivalent of a species being extinct nor a valid reason to remove the species from the lists of threatened and endangered species.

Comment: Several commenters opposed the clarification that listed entities would be delisted if they do not meet the definition of ''species'' because they believe it is an effort to give the Services additional tools not to list species in need of listing and protection of the Act. Others argued that the proposed language would allow the Services to provide less or no protection to some populations within a larger species. And still others argued that, while it is true that new information could suggest a currently listed species is not a taxonomic species or subspecies, new science is not always definitive. Those commenters stated the proposed language could lead the Services to move prematurely to delist a species based on new information that may be inadequate, or later proved to be inaccurate, without any evaluation of whether the particular population in question is a threatened or endangered distinct population segment (DPS) of the new taxonomic subspecies or species into which the new evidence places it.

Response: This provision merely reflects the text and intent of the Act, *i.e.,* only ''species,'' as defined in section 3 of the Act, may be listed under the Act. If the Services determine that a group of organisms on the list does not constitute a ''species,'' then the listing is contrary to the Act, and the Services may initiate rulemaking procedures to delist the entity. We note that the Services may choose to consider whether there is an alternative, valid basis for listing some or all of the listed entity before finalizing a delisting. For example, in some circumstances, for vertebrate species, if the constituent vertebrate populations constitute DPSs, they may be separately listed. This does not preclude the Services from considering whether a valid ''species,'' comprising some or all of the organisms covered by the delisted entity, warrants listing as a threatened or endangered ''species.''

This provision would apply if new information, or a new analysis of existing information, leads the Secretary to determine that a currently listed entity is not a taxonomic species, subspecies, or a DPS. When, after the time of listing, the Services conclude that a species or subspecies should no longer be recognized as a valid taxonomic entity, the listed entity should be removed from the list because it no longer meets the Act's definition of a ''species.'' In other instances, new data could indicate that a particular listed DPS does not meet the criteria of the Services' Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (''DPS Policy''; 61 FR 4722, February 7, 1996). In either circumstance, the entity would not qualify for listing under the Act.

Contrary to one of the comments, this provision would not allow some populations to be delisted while others remain listed if the combination of populations still meets the definition of a ''species'' and that species meets the definition of ''threatened species'' or ''endangered species.'' The courts have made clear that, before delisting any DPS of a listed species, the Services must consider how the delisting will affect other members of the listed entity. E.g., *Humane Soc'y of the U.S.* v. *Zinke,* 865 F.3d 585, 602 (D.C. Cir. 2017) (holding that the delisting of the Western Great Lakes DPS of the grey wolf was invalid because FWS had failed to consider ''whether both the segment and the remainder of the already-listed wolves would have mutually independent statuses as species''); *Crow Indian Tribe* v. *U.S.A.,* 343 F. Supp. 3d 999, 1014 (D. Mont. 2018) (delisting of the Greater Yellowstone Ecosystem population of grizzly was invalid because FWS had failed to consider how delisting would affect the remainder).

The Services agree that new scientific data or information is not necessarily more definitive, and we acknowledge that scientific and taxonomic data are always evolving. Delisting a species following a determination that it no longer meets the definition of a species will only be undertaken after a rigorous review of the best available scientific and commercial data, and a proposed and final rulemaking process.

Comment: Some commenters opposed the provision regarding delisting when an entity does not meet the definition of a ''species,'' because they are concerned the change would allow the Services to retroactively reanalyze original listing information and decide that a species, evolutionarily significant unit, or DPS no longer requires protection based on political factors.

Response: The Services' determination that a species no longer meets the definition of a species must be based on the best available scientific and commercial data. Even under the current regulations (current 50 CFR 424.11(d)(3)), the Services have the ability to delist when the entity is found not to qualify as a listable entity. The Services do not intend the regulatory language change to allow for listing determinations to be based on anything but the statutory standard.

Comment: Some commenters opposed delisting a species when it does not meet the definition of a ''species'' because they believe it will increase litigation and result in continuous listings, delistings, and relistings by focusing on how a species is defined rather than the species' status.

Response: Under the current regulations, we have authority to delist entities that do not meet the definition of a ''species'' under the Act, so the language does not change our requirements in this regard. Acting consistently with the Act in this way allows the Services to focus their resources on recovering species that are threatened or endangered. If a species, subspecies, or DPS no longer meets the Act's definition of a ''species,'' it should be removed from the list so the Services can focus their resources on species most in need.

Comment: Some commenters opposed delisting based on a listed entity not meeting the definition of ''species'' because they argued many taxonomic changes have been made in recent years based solely on DNA information and analysis. They argued that, while DNA analysis is a good tool, it has limitations and is still subjective in regard to distinct species because our taxonomic system is subject to human error.

Response: As stated above, new information is not always definitive. The Services' determinations identifying species, subspecies, and DPSs are not typically made solely on the basis of DNA analyses. Determinations that a listed entity does not meet the definition of ''species'' will be based on the best available scientific and commercial data.

Comment: Some commenters stated that delisting an entity when it does not meet the definition of ''species'' would allow the Services to forgo considering whether the taxonomic subspecies or species of which the Service now believes the entity to be a part must now be considered threatened or endangered in a significant portion of its range based on the status of that population.

Response: This provision will not allow the Services to delist one or more populations of a species or subspecies without considering whether the species or subspecies is threatened or endangered throughout all or a significant portion of its range. As discussed earlier, the courts have made clear that, before delisting a population of a listed species, the Services must consider how the delisting will affect other members of the listed species.

Comment: Several commenters objected to delisting a species when it does not meet the definition of ''species'' because they believe it would result in leaving highly imperiled populations at risk of a gap in the Act's protections merely because of a taxonomic reclassification.

Response: Delisting a species when it does not meet the definition of a ''species'' under the Act would not leave imperiled populations that otherwise would merit listing at risk. This provision refers to taxonomic reclassifications. If a particular entity no longer meets the Act's definition of a species, that entity would not qualify for listing under the Act.

Comment: Some commenters opposed delisting a species when it does not meet the definition of ''species'' because they believe it is unnecessary. They stated this type of taxonomic information would come out in a species assessment using the five factors. They argued the taxonomic proposal is duplicative, in that it singles out one issue for specific treatment, when it is already covered by the broader language of § 424.11(e)(2). Further, some stated that, in addition to the regulatory change, the Services should also consider adopting objective standards and criteria for the Services' taxonomic determinations.

Response: The Services conclude that this provision provides a helpful clarification of the basis for delisting a species. Specifically, if an entity is not a ''species'' within the meaning of the Act, then, by definition, it cannot be a ''threatened species'' or ''endangered species.'' The Services will make their determinations based on the best available scientific information for determining whether a group of organisms is a species, subspecies, or DPS. The Services joint DPS Policy (61 FR 4722, February 7, 1996) already provides sufficient criteria and standards when determining whether vertebrate species are DPSs. In order to be designated a DPS, vertebrate populations must be discrete and significant to the taxon as a whole.

Comment: Some commenters were concerned that recovery actions that mix genes of a DPS with other populations of the taxon, or significantly modify the distribution of the DPS, may inadvertently undermine protections of the Act. That outcome may occur if the proposed rule allows for the interpretation that a DPS for which recovery actions have modified genetic makeup or distribution is no longer discrete or significant and therefore does not meet the species definition required for protection under the Act.

Response: We understand the commenter's concern; however, if a population or set of populations qualify as a DPS under the two criteria set out in the DPS Policy it is extremely unlikely that a situation such as described by the commenter would arise, and it is not the Services' intention to create such situations. Secondly, if, through the process of recovery, a listed DPS begins mixing or interbreeding with other populations of that taxon such that it no longer met the DPS criteria, the Services could still evaluate whether that altered or larger entity is a ''species'' at risk of extinction and that warrants listing under the Act. As with any listing and delisting determination, the Services would base any such determination on the best available scientific and commercial data and after conducting a status review of the particular ''species.''

Comment: Several commenters stated that the reference to data in error as a reason for delisting should be retained because it is important for the public to know when an error has been made. Other commenters stated its removal is unnecessary and was not justified by the Services. They also requested the following be added as a fourth fact for delisting as 50 CFR 424.11(e)(4): ''The best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.''

Response: The Services have determined this provision is unnecessary because the other delisting factors being finalized in this rule, including whether the listed entity meets the definition of ''species'' or a determination that a species meets the definition of a ''threatened species'' or ''endangered species,'' adequately capture instances in which a species was listed due to an error in the data, or in the interpretation of that data, at the time of the original classification. Furthermore, our delisting rules will clearly contain the rationale and justification for our proposed and final actions; if a species were listed in error, these rules would provide the requested transparency to the public. The Services had also rarely invoked the prior § 424.11(e)(3) due to confusion about when it should apply, so adopting a more simple structure that tracks the foundational statutory standards is appropriate and will result in more transparent and fulsome explanations of precisely why particular species are no longer found to warrant protection under the Act. We have therefore decided not to make the requested regulatory text change.

Comment: Some commenters stated that the revised § 424.11(e) creates an expedited delisting process whereby a 5-year status review automatically leads to delisting. They suggested the proposed changes would trigger that automatic process for delisting, but not for uplisting a species.

Response: Section 424.11(e) does not create an expedited or automatic delisting process following a 5-year review. Under the revised regulations finalized in this document, as is the case currently, no changes to a species' listing status will be made except through a rulemaking that complies with the notice and comment procedures of the Act. This is true regardless of whether a species is considered for uplisting, downlisting, or delisting.

Comment: Some commenters suggested the introductory clause of proposed § 424.11(e) be revised to read, ''The Secretary will delist a species if the Secretary, based on the best available scientific and commercial data available, including any information received in accordance with procedures set forth in § 424.15 or § 424.16(c), finds that:'' They believe this change will help clarify that the public will continue to have a role in reviewing, commenting on, and providing information concerning proposed delistings.

Response: The additional language suggested by the commenter is not necessary. The procedures set forth in § 424.15 and § 424.16(c) relate to providing the public notice and an opportunity to review proposed regulations and other decisions such as identification of candidate species. As noted above, any determination by the Services to list, delist, or reclassify a species must be effectuated through the

rulemaking process, which provides the public the right to review and comment on those determinations before they are finalized.

Comment: Some commenters suggested the Services should expressly permit a species to be delisted in part of its range because doing so would allow the Services to better tailor the protections of the Act to a species' conservation needs by removing unneeded protections while retaining protections in other parts of its range.

Response: The Act authorizes the Services to list ''species,'' which includes species, subspecies, or DPSs. With regard to vertebrate species, the Services may determine there are DPSs within a listed species or subspecies. The Services may then assess the status of those DPSs. Should any of those DPSs be determined not to meet the definition of a threatened or endangered species, they could be delisted under the Act after the Services consider how delisting the DPS would affect the listed species or subspecies. This approach permits the Services to better tailor protections and prohibitions of the Act to the listed DPSs that warrant protection.

Comment: Some commenters stated the delisting process should be streamlined to allow for easier removal of species once documentation shows they are no longer threatened or endangered.

Response: The process that must be followed to delist or reclassify a species is the same as must be followed in listing a species. The Services are required to assess the status of a species based on the best available scientific and commercial data, applying the five factors, and engaging in the mandatory notice-and-comment rulemaking procedures as noted above.

Comment: Some commenters requested that ''will'' be replaced with ''shall'' in the first sentence of § 424.11(e) to ensure the Services abide by the strict requirements of the Act.

Response: The Services have made this change to make this provision consistent with the other paragraphs of § 424.11.

Comment: Some commenters stated that the Services should add conservation plans and agreements as a factor to consider in delisting decisions.

Response: The Services consider conservation plans and agreements, as well as all other conservation efforts, in their decisions to list, reclassify, or delist a species. Section 4(b)(1)(A) of the Act requires the Secretary to make determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species when determining whether a species meets the definition of a ''threatened'' or ''endangered'' species.

Comment: Some commenters requested the regulatory text for the proposed delisting factors at 50 CFR 424.11(e) address these issues by being revised to add ''reclassify.'' They requested that the text would read: ''The Secretary will delist or reclassify a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available. . . .''

Response: As noted in the heading of 50 CFR 424.11, this section addresses factors for listing, delisting, and reclassifying species. Paragraph (e) of that section pertains only to delisting species. Therefore, it would not be appropriate to reclassify a species if any of the three findings in 50 CFR 424.11(e) are made by the Secretary. Reclassification is covered in existing (and revised) 50 CFR 424.11(c).

Comment: Some commenters stated that the Services should develop criteria to inform the assessment of the ''adequacy'' of State or local regulatory programs when making a delisting or downlisting determination. To ensure that future delisting and downlisting decisions are fully explained, documented, and can proceed expeditiously, the Services should develop guidelines establishing the necessary criteria for the development, and the Services' review, of State and local regulatory mechanisms. They further requested the Services convene a working group that includes representatives of State and local governments and members of the regulated community to inform the development of the appropriate guidelines and that the Services make these guidelines available for public review and comment prior to adoption.

Response: The Services decline to adopt or develop criteria at this time. The Services may in the future consider developing such criteria, such as in guidance.

Comment: Some commenters stated the Act's five listing criteria are not particularly well suited to delisting. While they need to be addressed prior to delisting, they are focused on threats instead of recovery, and, therefore, do not provide a science-based recovery objective. They suggested the Services should provide recovery teams with additional clarity on how to identify recovery goals that are clear, consistent, measurable, and based on the best available science, in order to ensure that the long-term health and viability of recovered species will be maintained after they are returned to State management.

Response: The Services decline to make revisions to these regulations in this regard. First, regarding the suggestion that section 4(a)(1) factors are not relevant to a delisting determination, the statute and case law are in fact clear that the section 4(a)(1) factors are intrinsically central to determining whether a species meets the definition of a ''threatened species'' or an ''endangered species,'' whether the question is asked in the context of a potential listing or a potential delisting. [See discussion above and citation to the *Friends of Blackwater* case.] In response to the suggestion to provide guidance to recovery teams, the Services note that they rely on their Joint Interim Recovery Planning Guidance to provide guidance to recovery teams and others on developing recovery goals.

Comment: Some commenters stated the five listing criteria should be based on ''known'' data and information, instead of making assumptions in order to list a species.

Response: The Services are required to make listing decisions based on the best available scientific and commercial data. Those data are not required to be free from uncertainty. We are not required to wait to make listing determinations until better or more concrete science is available, and the Act requires that we base our decision on the best *available* data. *See, e.g., San Luis & Delta-Mendota Water Authority* v. *Jewell,* 747 F.3d 581, 602 (9th Cir. 2014) (''best available'' standard does not require perfection or best information *possible*) (*citing Building Indus. Ass'n* v. *Norton,* 247 F.3d 1241, 1246 (D.C. Cir. 2001)); *Alaska* v. *Lubchenco,* 825 F. Supp. 2d 209, 223 (D.D.C. 2011) (same); *Maine* v. *Norton,* 257 F. Supp.2d 357, 389 (D.Me. 2003) (noting that the ''best available'' standard ''is not a standard of absolute certainty'').

Comment: Some commenters expressed agreement that the standard and criteria for delisting should be no more than that for listing. The standards should be the same but for one exception the FWS has previously recognized. The commenter stated that the prioritization to list [sic] foreign species should be greater than for domestic listed species because of the lack of benefits for foreign listed species in the negative effects in the balance.

Response: We assume the commenter to mean 'prioritization for delisting',

rather than 'list'. The Services agree that the standards for listing and delisting are the same. The Act does not allow the Services to use different standards with regard to listing domestic and foreign species. FWS recognizes that the benefits of listing species that are not under U.S. jurisdiction may be more limited than the benefits that domestic species realize and allocates its funding to reflect this difference. With the limited resources that FWS allocates to foreign species, we prioritize those where listing can result in conservation, for example, species that are in trade across U.S. borders.

Comment: Some commenters noted that the proposed regulations include changes in paragraph designations and cross-references, but not in the substantive content of certain provisions, in particular new paragraphs (f) and (g). The commenter requested that these provisions be modified to better take into account State and foreign nation programs and species listings under the Convention on International Trade in Endangered Species (CITES) when making listing determinations.

Response: The Services decline to make this change. Those provisions sufficiently take into account State and foreign programs and CITES listings when making listing determinations under the Act and do not merit revision at this time.

Comments Regarding Not Prudent Determinations Comment

Several commenters thought the Services should retain as a basis for a not-prudent determination that designation of critical habitat for a species would not be beneficial to its conservation. Some noted that this approach would be consistent with legislative history and several court decisions that cited to the legislative history. *See Natural Resources Council* v. *U.S. Dep't of the Interior,* 113 F.3d 1121 (9th Cir. 1997); *Conservation Council of Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998).

Response: The House Report for the 1978 amendments contains statements indicating that Congress intended for the Services to designate critical habitat except in those rare instances when critical habitat would not be ''beneficial to'' or ''in the best interests of'' the species. H.R. Rep. No. 97–1625, at 16–18 (1978). Consistent with this understanding of the authority to make not prudent findings, we identify in these revised regulations a number of specific circumstances in which we anticipate that it would not be prudent to designate critical habitat because it would not benefit the species. This final regulation includes some circumstances that were already captured in the current regulations at § 424.12(a)(1)(ii) and some additional circumstances that we have identified based on our experience in designating critical habitat.

Basing prudency determinations on whether particular circumstances are present, rather than on whether a designation would be ''beneficial,'' provides an interpretation of the statute that is clearer, more transparent, and more straightforward. It also eliminates some confusion reflected in the courts' decisions in the *NRDC* and *Conservation Council* cases. In those decisions, the courts remanded the not prudent determinations at issue because the FWS had not articulated a rational connection between the facts and the agency's conclusion that designating critical habitat would not be beneficial for the species. 113 F.3d at 1125–26; 2 F. Supp. 2d at 1284. Although the courts held that FWS had failed to weigh the benefits and risks, or had failed to consider potential benefits beyond consultation benefits, the courts' reasoning indicates that the decisions were based on the insufficiency or absence of any factual analyses of the specific data available. The court in *NRDC* also found that, in implementing the regulations that were in place at the time, FWS had erroneously applied a ''beneficial to *most of* the species'' standard instead of a ''beneficial to the species'' standard. Moreover, the decisions' reliance on the legislative history statements equating ''not prudent'' with ''not beneficial to the species'' is undermined by the fact that ultimately Congress did not choose to include the ''not beneficial to the species'' language as a standard or limitation in the statute.

Further, we note that in both decisions the courts seem to have considered principles related to the discretionary process for weighing the impacts of critical habitat designation under section 4(b)(2) of the Act, which do not govern ''not prudent'' determinations. In part, this appears to be due to the courts' interpretations of statements the Services had made regarding their intentions in applying the regulatory provisions. *See* 113 F.3d at 1125 (citing 49 FR 38900, 38903 (1984) (noting that the Services would balance the risks to the species of designating and the benefits that might derive from designation and would forgo designations of critical habitat where the possible adverse consequences would outweigh the benefits)). We now take the opportunity to clarify the separate nature of ''not prudent'' designations and the discretionary analyses that we may elect to take under section 4(b)(2) of the Act. We intend these evaluations to address separate factors.

We emphasize that determining that a species falls within one or more of the circumstances identified in the revised regulations does not bring the prudency analysis to an end. As the courts in both *NRDC* and *Conservation Council* found, in determining whether or not designation of critical habitat is prudent, the Services must take into account the specific factual circumstances at issue for each species. 113 F.3d at 1125; 2 F. Supp. 2d at 1287–88. However, as we clarify below, this does not require the Services to engage in the type of area-by-area weighing process that applies under section 4(b)(2) of the Act.

Comment: Numerous commenters stated that the expansion of circumstances when the Services may find critical habitat designation to be not prudent is not consistent with the Act or congressional intent. Commenters expressed concerns that this change will result in numerous species being denied the protections afforded by critical habitat designations. They also stated that determinations that critical habitat is not prudent will be much more common under the proposed regulations than they have been in the past, and that this is a major change from the current regulation.

Response: It is permissible under the Act, as well as the current and revised regulations, for the Services to determine that designating critical habitat for a species is not prudent. *See* 16 U.S.C. 1533(a)(3)(A) (directing the Secretary to designate critical habitat for listed species concurrent with listing that species ''to the maximum extent prudent and determinable''). The changes to the regulations are not intended to expand the circumstances in which the Services determine that designation of critical habitat is not prudent. Rather, the revisions are intended to provide clarity and specificity with respect to the circumstances in which it may not be prudent to designate critical habitat by replacing the vague phrase ''not beneficial.'' Congress recognized that not all listed species would be conserved by, or benefit from, the designation of critical habitat, but did not specify what those circumstances might be. While the statutory language allows us to forgo designating critical habitat in rare circumstances in which designation of critical habitat does not contribute to the conservation of the

species, the Services recognize the value of critical habitat as a conservation tool and expect to designate it in most cases. Therefore, the Services anticipate that not prudent findings will remain rare and would be limited to situations in which designating critical habitat would not further the conservation of the species.

Comment: Several commenters stated that the Services may only properly make a not prudent determination if there is specific information that a species would be harmed by designating critical habitat.

Response: Congress did not impose any such limitation on the Secretaries' authority to make not prudent determinations. The statutory language requires that the Services designate critical habitat ''to the maximum extent prudent.'' The Services have long interpreted that language to apply to a broader range of circumstances beyond those in which a species would be harmed by the designation. Other circumstances occasionally may arise where a designation is not wise, such as when a designation would apply additional regulation but not further the conservation of the species. The current regulations (81 FR 7414; February 11, 2016, and at 50 CFR 424.12(a)(1)) allow for a determination that critical habitat is not prudent for a species if such designation would: (1) Increase the degree of threat to the species through the identification of critical habitat, or (2) not be beneficial to the species. The determination that critical habitat is not prudent for a listed species is uncommon, especially because most species are listed, in part, because of impacts to their habitat or curtailment of their range. Most not prudent determinations have resulted from a determination that there would be increased harm or threats to a species through the identification of critical habitat. For example, if a species was highly prized for collection or trade, then identifying specific localities of the species could render it more vulnerable to collection and, therefore, further threaten it. However, Congress did not limit ''not prudent'' findings to those situations; in some circumstances, a species may be listed because of factors other than threats to its habitat or range, such as disease. In such a case, a not prudent determination may be appropriate.

Comment: Several commenters suggested additional circumstances where designation may not be prudent, including when the economic and societal impacts outweigh the benefits to the species, when areas to be designated are already under Federal management for other purposes, or when areas are covered by a habitat conservation plan under section 10(a)(1)(B) or other conservation plan.

Response: Under section 4(b)(2) of the Act, the Secretaries have the discretion to determine whether areas should be excluded from a critical habitat designation if the benefits of exclusion outweigh the benefits of inclusion, unless the exclusion will result in the extinction of the species concerned. A discretionary weighing analysis under section 4(b)(2) can involve economic or other impacts and land management of the areas concerned. We note that the ''not prudent'' determination and any section 4(b)(2) weighing are separate processes. Because of the specific reference in section 4(b)(2) to weighing of benefits, we conclude that Congress intended the prudency language to address other matters, as reflected in this final regulation.

As a result, we do not infer from the *NRDC* and *Conservation Council* decisions that, to determine whether or not it is prudent to designate critical habitat, the Services must undertake a balancing or weighing of benefits akin to the section 4(b)(2) analysis for determining whether or not to exclude specific areas from a critical habitat designation. We now take the opportunity to clarify the separate nature of ''not prudent'' designations and the discretionary analyses that we may elect to take under section 4(b)(2) of the Act. First, in making prudency determinations, the Services evaluate critical habitat designation *as a whole* for that species, while in making exclusion determinations under section 4(b)(2) the Services must evaluate *specific areas.* Second, as referenced earlier, unlike exclusion analyses under section 4(b)(2), the statute does not expressly require a balancing of benefits. Third, prudency determinations must be made at the time of listing based on the best scientific information available at that time, while exclusion determinations are only made if the Secretary first determines the boundaries of the areas that meet the definition of ''critical habitat.'' Based on these differences, prudency determinations must address different factors, on a different scale, based on a different set of data, and usually at a different time from section 4(b)(2) analyses. Indeed, a ''not prudent'' determination precludes the need to undertake the process of identifying specific areas and considering the impacts of designation of such specific areas under section 4(b)(2).

Comment: Several commenters objected to the Services making a not prudent determination if areas within U.S. jurisdiction would provide only negligible conservation value to a species that occurs primarily outside the jurisdiction of the United States. Some expressed concern that ''negligible'' is vague and undefined. Some stated that this course of action is contrary to the plain language of the Act and does not consider the need for migratory or transitory areas that contribute to the conservation of the species.

Response: In our 2016 revision of these regulations (81 FR 7414; February 11, 2016), we noted in the preamble that the consideration of whether areas within U.S. jurisdiction provide conservation value to a species that occurs in areas primarily outside U.S. jurisdiction could be a basis for determining that critical habitat designation would not be prudent (81 FR 7432; February 11, 2016). For the purposes of clarity and transparency, we proposed to add this consideration directly to the regulatory text. In the preamble to our proposed regulations, we explained that we would apply this determination only to species that primarily occur outside U.S. jurisdiction and where no areas under U.S. jurisdiction contain features essential to the conservation of the species.

The dictionary defines ''negligible'' to mean ''so small or unimportant as to be not worth considering; insignificant.'' In the context of ''negligible conservation value'' we mean that the conservation value of habitats under U.S. jurisdiction would be insignificant to the conservation of the listed entity. The circumstances when a critical habitat designation would provide negligible conservation value for a species that primarily occurs outside of U.S. jurisdiction will be determined on a case-by-case basis, and factors such as threats to the species or its habitat and the species' recovery needs may be considered.

Finally, if areas under U.S. jurisdiction are important to the species' conservation for migratory or transitory purposes, we expect that we would not make a determination that critical habitat is not prudent. Based on the Services' history of implementing critical habitat, we anticipate that not prudent determinations will continue to be rare.

Comment: Some commenters suggested that critical habitat carries substantive and procedural benefits aside from those arising from the obligation to consult under section 7, even if consultation through section 7 is the sole regulatory mechanism for

protecting critical habitat under the Act. These benefits include educating the public and State and local governments about the importance of certain areas to listed species, assisting in species recovery planning efforts, protecting against unanticipated Federal actions affecting the habitat that could be important in allowing the species time to adapt or demonstrate possible resilience to encroaching effects of climate change, or establishing a uniform protection plan prior to consultation. They cited the decisions in *NRDC* and *Conservation Council,* 113 F.3d at 1121; 2 F. Supp. 2d at 1280. They also noted that the Services acknowledged such benefits at the time of adopting the prior regulations, at 81 FR 7414–7445 (Feb. 11, 2016) (describing ''several ways'' that critical habitat ''can contribute to the conservation of listed species''). In light of the myriad benefits of designating, the commenters assert that the threat of climate change actually emphasizes the importance of designating critical habitat rather than justifying creating an additional exception from designation where threats to habitat stem from climate change. They further urge that designation can still benefit a species even if section 7 alone cannot address all the threats to a species' habitat.

Response: Although the direct benefit that the statute provides for designated critical habitat is through section 7 consultation, depending on the factual circumstances surrounding a given species, designating critical habitat may carry incidental additional benefits to the species beyond the protections from section 7 consultation. These regulatory revisions would not preclude us from designating critical habitat if any of the specific circumstances that the revised regulations identify, including climate change, is present—when we determine that designating critical habitat could still provide for the conservation of the species. However, through implementing the Act we have encountered situations in which threats to the species' habitat leading to endangered or threatened status stem solely from causes that cannot be addressed by management actions identified through consultations under the destruction or adverse modification standard of section 7(a)(2) of the Act.

In those situations, a designation of critical habitat could create a regulatory burden, as well as divert resources away from listing and designating critical habitat for other species, without providing any overall conservation value to the species concerned. Examples would include species experiencing threats stemming from melting glaciers, sea level rise, or reduced snowpack but no other habitat-related threats. In such cases, a critical habitat designation and any resulting section 7(a)(2) consultation, or conservation effort identified through such consultation, could not ensure protection of the habitat. The revised regulations identify this situation as a circumstance in which designation of critical habitat is often not prudent, but determining that a species falls within this category does not make a not prudent finding mandatory, nor is the list of circumstances in which designation may not be prudent exhaustive. As we discussed in response to an earlier comment, in such situations (as with all not prudent analyses), the Services would need to take into account the specific factual circumstances at issue for the given species.

Comment: Several commenters expressed concern that the proposed regulatory changes to the circumstances in which the designation of critical habitat would not be prudent would result in the Services not designating critical habitat for species threatened by climate change. This outcome would eliminate the possibility of designating unoccupied critical habitat that could provide habitat for species under a changing climate in the future.

Response: The Services intend to make not prudent determinations only in the rare circumstance when the designation of critical habitat would not assist in conserving the species. For example, the Services might conclude that Federal action agencies could take no meaningful actions to address the threats to the habitat of a particular species that might arise from climate change. Under these circumstances, the Services might determine that it is not prudent to designate critical habitat because the designation would not be able to further the conservation of the species in the face of these threats, and our resources are better spent on other actions that assist in the conservation of listed species. These regulatory revisions would not preclude us from designating occupied or unoccupied critical habitat if any of the specific circumstances that the revised regulations identify, including climate change, is present if we determine that designating critical habitat could still provide for the conservation of the species.

Comment: Several commenters stated that the Services should be required to determine that a designation is not prudent when any of the situations listed in the proposed regulation at § 424.14(a)(1) exist, rather than stating that the Secretary ''may, but is not required to, determine that a designation would not be prudent.'' Others thought that use of phrases such as ''not limited to'' was too open-ended and would result in more not-prudent determinations. Both sets of commenters believe the proposed approach leaves too much discretion to the Services.

Response: We recognize that some commenters would appreciate the greater certainty that would occur if a not prudent determination were mandatory rather than discretionary, while other commenters believe that critical habitat designation should be prudent in almost all cases. However, the question regarding whether designating critical habitat is prudent must be addressed on a case-by-case basis. Each species is different, and the threats they face can be complex; a one-size-fits-all approach is not required by the statute and may not be in the best interests of the species. The inclusion of ''but not limited to'' to modify the statement ''the factors the Services may consider include'' allows for the consideration of circumstances where a determination that critical habitat is not prudent would be appropriate. It is important to expressly reflect this flexibility in the revised regulations. Any future rule that includes a not prudent determination will clearly lay out the Services' rationale as to why a not prudent determination is appropriate in that particular circumstance.

In some situations, the Services may conclude, after a review of the best available scientific data, that a designation would nevertheless be prudent even in the enumerated circumstances.

Comment: Several commenters thought the Services should simply delete § 424.12(a)(1)(ii) instead of revising it. They further stated that the Act does not require that a species currently be threatened by habitat loss before critical habitat is designated and protected, and the spirit of the Act would not be served by the imposition of such a requirement by regulation.

Response: The Services are finalizing the proposed revisions to § 424.12(a)(1)(ii) because we have concluded that they will provide the public and the Services with a clearer, more transparent, and more straightforward interpretation of when it may not be prudent to designate critical habitat. Critical habitat is a conservation tool under the Act that can provide for the regulatory protection of a species' habitat. The previous regulations and these revisions do not establish a

requirement that a species be threatened by the modification, fragmentation, or curtailment of its range for critical habitat to be prudent to designate. However, the regulation and revisions establish a framework whereby if we list a species under the Act and determine through that process that its habitat is not threatened by destruction, modification, or fragmentation, or that threats to the species' habitat stem primarily from causes that cannot be addressed by management actions, then the Secretary may find that it would not be prudent to designate critical habitat. Examples would include species experiencing threats stemming from melting glaciers, sea level rise, or reduced snowpack but no other habitat-based threats. In such cases, a critical habitat designation and any resulting section 7(a)(2) consultation, or conservation effort identified through such consultation, could not ensure protection of the habitat. While this provision is intended to reduce the burden of regulation in rare circumstances in which designating critical habitat would not contribute to conserving the species, the Services recognize the value of critical habitat as a conservation tool and expect to designate it in most cases.

Comment: Some commenters suggested that, by allowing for not prudent determinations where the threats stem solely from causes that cannot be addressed through management actions resulting from consultation under section 7(a)(2) of the Act, the Services would be pre-judging future Federal actions and outcomes of the consultations without basis for doing so. They cited two decisions from the Ninth Circuit Court of Appeals holding that the Services may not rely on the availability of other protections as a basis for not carrying out the mandatory duty of designating critical habitat.

Response: The Services will make a determination as to whether a designation of critical habitat is prudent based upon the best scientific data available to us at the time of listing. This determination includes a thorough analysis of the factors contributing to listing; therefore, we will be able to assess the degree to which these factors *can be*—not whether they *will be*—influenced by consultations under the destruction or adverse modification standard of section 7(a)(2) of the Act. In the rare circumstances in which we determine that the threats to the species' habitat are of such a nature that Federal action agencies are unable to modify or manage their actions such that the underlying causes posing risks to the habitat can be affected or influenced, then conducting consultations under the destruction or adverse modification standard of section 7(a)(2) of the Act on the impacts of the Federal action on critical habitat would not further the conservation of the species, and designation of critical habitat would be not prudent. If the best available information changes over time such that habitat-based human intervention is possible, we can designate critical habitat at that time. In reaching the conclusion that it may not be prudent to designate in such circumstances, we are not relying on the existence of other protections and thus the cited cases are not relevant. Our interpretation of the statutory term ''prudent'' set forth in this rule is not contingent on there being other available protections.

Comments Regarding Unoccupied Critical Habitat

Comment: Numerous commenters stated that the Services have not justified the proposed change from current regulations that were recently amended in 2016.

Response: On May 12, 2014, the Services published a proposed rule revising the regulations at § 424.12 (79 FR 27066), in which we changed the step-wise approach we had been using since 1984 to allow for simultaneous consideration of occupied and unoccupied habitat according to the definition of ''critical habitat'' in the Act. We finalized the rule on February 11, 2016 (81 FR 7414), eliminating the sequenced approach to considering occupied habitat before unoccupied habitat. In carrying out Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' the Department of the Interior (DOI) and the National Oceanic and Atmospheric Administration (NOAA) published documents in the **Federal Register** in summer 2017 (82 FR 28429, June 22, 2017; 82 FR 31576, July 7, 2017) requesting public comment on how the agencies could implement regulatory reform and improve the efficiency and effectiveness of regulations. Both of these documents resulted in input from States, trade organizations, and private landowner groups indicating that the Services should go back to considering occupied habitat before unoccupied habitat when designating critical habitat.

This final rule responds to those concerns as well as comments made on the proposed rule here by restoring the requirement that the Secretary will first evaluate areas occupied by the species. In addition, this approach furthers Congress's intent to place increased importance on habitat within the geographical area occupied by the species when it originally defined ''critical habitat'' in 1978. The Conference Report accompanying the amendments specified that Congress was defining ''critical habitat'' as ''specific areas *within* the geographical area occupied by the species at the time it is listed that is essential to the species conservation and requires special management.'' H.R. Rept. No. 95–1804 (emphasis in the original). The report went on to state in the paragraph that followed: ''In addition, the Secretary may designate critical habitat outside the geographical area occupied by the species at the time it is listed if he determines such areas are essential for the conservation of the species.''

Comment: Returning to the sequenced approach of considering occupied habitat first will result in critical habitat designations that are not adequate to conserve species that may face range shifts into previously unoccupied habitat that will be species' best chance for survival in a rapidly changing environment as a result of climate change.

Response: As the Act requires, we designate unoccupied critical habitat when it is essential to the conservation of the species. For species threatened by climate change, we will designate unoccupied habitat if we determine that occupied areas are inadequate to ensure the conservation of the species and we identify unoccupied areas that are essential for the conservation of the species (including that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area currently contains one or more of those physical or biological features essential to the conservation of the species).

In specific circumstances where the best scientific data available indicate that a species may be shifting habitats or habitat use, it is permissible to include specific areas accommodating these changes in a designation, provided that the Services can explain why the areas meet the definition of ''critical habitat.'' In other words, we may find that an unoccupied area is currently ''essential for the conservation'' even though the functions the habitat is expected to provide may not be used by the species until a point in the future. The data and rationale on which such a designation is based will be clearly articulated in our proposed rule designating critical habitat. The Services will consider whether habitat is occupied or unoccupied when determining whether to designate it as critical habitat and use the best available scientific data on a case-by-

case basis regarding the current and future suitability of such habitat for recovery of the species.

Comment: Many commenters stated that the changes to the procedures for designating unoccupied habitat do not adequately account for the species' recovery needs. Relatedly, some commenters suggested that the Services designate enough critical habitat at the time of listing to ensure that a species can recover.

Response: Although designation of critical habitat and the development of recovery plans are guided by two separate provisions of the Act and implementing regulations, the ultimate goal of each is the same: To provide for the conservation of listed species. ''Conservation'' is defined as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary, *i.e.,* the species is recovered in accordance with § 402.02. 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.

In evaluating which areas qualify as critical habitat (subject to section 4(b)(2) exclusions), we follow the statutory requirements. Designation of critical habitat is one important tool that contributes to recovery, but a critical habitat designation alone may not be sufficient to achieve recovery. Indeed, given the limited regulatory role of a critical habitat designation (*i.e.,* through section 7's mandate that Federal agencies avoid destruction or adverse modification of critical habitat), it is generally not possible for a critical habitat designation alone to ensure recovery. Also, we must designate critical habitat according to mandatory timeframes, very often prior to development of a formal recovery plan. See *Home Builders Ass'n of Northern Cal.* v. *U.S. Fish and Wildlife Service,* 616 F.3d 983, 989–90 (9th Cir. 2010). However, although a critical habitat designation will not necessarily ensure recovery, it will generally further recovery because the Services base the designation on the best available scientific data about the species' habitat needs at the time of designation.

Comment: Many commenters did not agree with the Service's proposal that we would consider whether unoccupied areas could result in more efficient conservation when determining whether these areas are essential, for a variety of reasons. Some stated that ''less-efficient conservation'' is not defined and no thresholds were offered for determining what would be considered efficient conservation. Others thought this provision would grant the Services overreaching discretion to designate unoccupied areas that is not based on what is actually essential for conservation. Others stated that a decision on whether unoccupied areas are essential for conservation should be a scientific determination. Some commenters stated that the Services should not consider societal conflicts when designating critical habitat. They further stated that determining whether an area is essential for the survival or recovery of a species is an entirely different question than determining whether managing that area would be economically ''efficient.''

Response: Based on the confusion generated by this provision, we have removed the provision allowing the designation of unoccupied habitat where a designation limited to occupied habitat would result in less efficient conservation. We will only consider whether unoccupied areas are essential to the conservation of a species when occupied areas are not sufficient to conserve the species. When the Services propose to designate specific areas pursuant to section 3(5)(A)(ii), we will explain the basis for the determination, including the supporting data. Thus, the Services' explanation will be available for public comment in the context of each proposed critical habitat designation.

Comment: Some commenters suggested that the Act requires concurrent consideration of potential occupied and unoccupied critical habitat together, based on data showing occupancy at the time of listing as well as at the time of designating critical habitat, which could be later. The commenters are concerned that, if the Services prioritize occupied habitat and are not designating until later in time, some areas that the species used to occupy at the time of listing will lose the opportunity for protection. They suggest this course of action would violate the approach of ''institutionalized caution'' mandated in *T.V.A.* v. *Hill,* 437 U.S. 153, 194 (1978).

Response: As explained in the preamble to the final rule in 2016, the Services acknowledge that occupancy is to be determined with reference to where the species could be found at the time of listing. Where designation is taking place later in time, the Services will rely on evidence that was contemporaneous with the time of listing where possible or, where necessary, may rely on more current evidence of distribution if there is a reasonable basis to conclude that it reflects distribution at the time of listing. Thus, the Services are able to appropriately analyze areas for possible inclusion as occupied critical habitat using the touchstone of occupancy at the time of listing even where designation takes place later in time. This course of action adequately fulfills the Services' statutory mandate to designate critical habitat. We note that *T.V.A.* v. *Hill* was decided in the context of a section 7 consultation and an earlier version of the statute that predated even the statutory definition of ''critical habitat.'' The decision does not shed light on proper interpretation of the statutory provisions addressing designation of critical habitat.

Comment: Several commenters were concerned that the Services must commit to using the best scientific data available when designating unoccupied areas as critical habitat.

Response: We are mandated by the Act to use (and are committed to using) the best scientific data available in determining any specific areas as critical habitat, regardless of occupancy.

Comment: Some commenters stated that landowner willingness is an undefined term and will lead to confusion and inconsistent implementation. They further stated that success of conserving species is dependent on working with non-Federal landowners, and facilitating a process where they would be relieved from the responsibility of conserving species will put an undue burden on Federal and State landowners.

Response: We recognize that ''landowner willingness'' is not a defined term, but we are not required to define every term used in a preamble. Rather, it is appropriate to give such phrases their ordinary meaning in the context of making case-specific determinations. Given the varied circumstances that may be involved in designation of critical habitat, we conclude that it is a relevant factor to consider when we evaluate whether an unoccupied area is likely to contribute to the conservation of the species. We agree that conservation of most listed species is dependent on working with non-Federal landowners. That said, section 7 of the Act places special responsibility on Federal agencies to provide for the conservation of listed species. Therefore, it is appropriate to place more responsibility, relative to the

public generally or to private landowners, on Federal landowners to conserve listed species.

Comment: Some commenters stated that the definition of ''essential'' in the proposed regulations would limit Secretarial discretion to designate unoccupied areas as critical habitat.

Response: The statute limits Secretarial discretion to designate unoccupied areas to when we can determine such areas are essential to the conservation of a species. In the final regulation we explain that to be a specific area that is essential to the conservation there must be a reasonable certainty that the area currently contains one or more of those physical or biological features that are essential to the conservation of the species. It is appropriate through regulation to describe the circumstances or considerations that would lead the Secretary to conclude that unoccupied habitat is essential. Consistent with the requirements of section 3(5)(A)(ii), the question of whether unoccupied areas are essential can be complex and include an evaluation of which unoccupied areas are best suited to provide for long-term conservation. For example, unoccupied areas might be in Federal or conservation ownership with willing partners already committed to working on restoration and reintroduction. Some unoccupied areas could be free of threats or face reduced threats in comparison with other areas. Some unoccupied areas might require fewer financial and human resources in order to contribute to the conservation of a species than other areas. These are the types of case-specific factors that could be considered when making a determination that we are reasonably certain an area will contribute to the conservation of a species.

Comment: Numerous commenters raised issues with the proposed regulatory language that unoccupied areas needed to have a ''reasonable likelihood'' of contributing to conservation in order to be designated as critical habitat. Some thought this language provided too much deference to the willingness of the current landowner. Others raised concerns that the preamble language allowing the Services to use a lower threshold than ''likely'' to contribute to conservation would allow the Services too much discretion to designate unoccupied areas that would not be likely to contribute to species conservation and could lead to arbitrary decisions. Others suggested additional considerations of how we should determine that an area has a ''reasonable likelihood'' of contributing to the species conservation.

Response: In this final rule, we replace ''reasonable likelihood'' with ''reasonable certainty.'' As described above, in light of the public comments that the ''reasonable likelihood'' language was undefined, unclear, and could allow too much discretion to designate areas that would not ultimately contribute to species conservation, we concluded that the language of this final rule better reflects the need for high confidence that an area designated as unoccupied critical habitat will actually contribute to the conservation of the species. We consider the phrase ''reasonable certainty'' to confer a higher level of certainty than ''reasonable likelihood'' but not to require absolute certainty.

Comment: Some commenters stated that the Services should require a higher bar for designation of unoccupied critical habitat and require that unoccupied habitat be ''habitable'' as is, without restoration. Other commenters recommended that the Services require that unoccupied areas contain all the physical or biological features that occupied habitat has in order to designate them, or, if the Services determine they have the authority to designate unoccupied lands that require restoration, they should expressly declare a policy that doing so is a disfavored approach, only appropriate in dire circumstances.

Response: After considering these comments carefully, we agree that requiring reasonable certainty that any unoccupied area has, at the time of the designation, one or more of those physical or biological features that are essential to the conservation of the species comports with the language, legislative history, and purposes of the Act. Therefore, we have changed the regulatory text to substitute ''reasonable certainty'' for ''reasonable likelihood'' and are requiring that one or more of the physical or biological features be present.

Comment: Numerous commenters stated that the Services should have specific criteria for designating unoccupied critical habitat. They suggested criteria specifying: whether the area currently supports usable habitat for the species; the extent to which restoration may be needed for the area to become usable habitat; the financial and other resources available to accomplish any needed restoration; any landowner or other constraints on such restoration; how valuable the potential contributions will be to the biology of the species; and how likely it is that section 7 consultations will be triggered by Federal agency actions in the area.

Response: We agree and have clarified that one or more of those physical or biological features essential to the conservation of the species must be present for an area to be designated, even an unoccupied area.

Comment: A commenter recommended adding ''significantly'' to the last sentence of unoccupied habitat so that it reads, ''the Secretary must determine that there is a reasonable likelihood that the area will significantly contribute to the conservation of the species.''

Response: The insertion of ''significantly'' is not necessary because the Act already requires unoccupied critical habitat to be ''essential,'' and addition of the term ''significantly'' would be vague and unclear. Therefore, we decline to adopt the commenter's suggestion and will continue to rely on the statutory standard that unoccupied critical habitat must be ''essential for the conservation of'' a species.

Comment: Some commenters suggested that the Services have not adequately identified a reasonable basis to shift back to the sequential approach for designating critical habitat (of focusing first on occupied habitat and then looking to unoccupied habitat only if limiting to the first type of habitat would be inadequate to conserve the species). They cited to the explanation provided by the Services in a 2014 rulemaking action that proposed revisions to this provision that indicated the Services did not believe Congress mandated this restriction and that such a restriction was unnecessary in light of the statutory limitation of designation of unoccupied areas to those that are ''essential'' for the species' conservation. *See, e.g.,* 79 FR 27066, 27073 (May 12, 2014). They stated that, in the face of such a definitive rejection of the approach in 2016, the Services now propose to revert to a version of the prior approach based merely on perceptions that the Services intended to designate expansive areas of unoccupied habitat.

Response: The Services' preamble statements at the time of proposing the 2016 amendments to these regulations (in 2014) are not binding law, and we have explained the reasons for reconsidering these provisions. Even if the Services were correct in 2014 that the provision requiring sequencing of occupied and unoccupied habitat was not necessary, there was no suggestion that the prior provision had exceeded the Services' discretion. It is permissible for the Services to nevertheless reincorporate a similar provision back into the regulations that we have concluded is a preferable approach.

While we initially proposed during this rulemaking to adopt a slightly different approach from the one we followed prior to 2016 (in that we proposed to allow for designation of unoccupied areas in lieu of occupied areas where doing so would result in ''more efficient conservation,''), a number of commenters expressed concerns with that approach as being vague in that it introduces uncertainty and unpredictability into the determination and may be difficult to implement. After considering those comments, we concluded that the concept ultimately was not the best interpretation of the statute. Therefore, the approach in this final rule has been changed to be more aligned with the approach taken in the regulations prior to 2016.

Comment: The Services should require that both (1) occupied areas are insufficient and (2) designation of occupied areas would result in less-efficient conservation.

Response: As explained above, in response to comments that the ''efficient conservation'' concept was vague, we have removed the provisions regarding ''efficient conservation.'' Thus, unoccupied areas can be considered for potential designation only if limiting the designation to occupied areas would be inadequate to ensure recovery.

Comment: One State recommended that the Services develop a policy or metric to determine whether a particular area should be designated as critical habitat in unoccupied areas.

Response: This final rule explains the Services' general parameters for designating critical habitat. The details of why a specific area is determined to be essential to the conservation of the species will be in part informed by any generalized conservation strategy that may have been developed for the species, which is an optional step, and clearly articulated in our proposed and final rules designating critical habitat. That determination is a fact-specific analysis and is based on the best available scientific data for the species and its conservation needs. The proposed rule for each critical habitat designation will be subject to public review and comment.

Comments on Geographical Area Occupied by the Species

Comment: We received multiple comments stating that the regulatory definition of the ''geographical area occupied by the species'' gives the Services too much discretion and allows for the inclusion of areas that are not occupied by the species. Some commenters cited the court's decision in *Arizona Cattlegrowers' Ass'n* v. *Salazar,* 606 F.3d 1160, 1166 (9th Cir. 2010), in support of this view. Some commenters requested that the Services revise the definition to avoid inclusion of areas that are only used temporarily or periodically by the species, or modify the definition to explicitly equate occupancy with sustained or regular use rather than mere presence or occurrence of the species. Several commenters requested we remove the term ''range'' because, as indicated by the statute's use of this word in section 4(c), ''range'' is a broader concept than ''geographical area occupied by the species'' and can include unoccupied areas. Some commenters requested that the existing definition be withdrawn.

Response: We are not revising the regulatory definition of ''geographical area occupied by the species'' at this time.

Comment: Numerous commenters stated that protection of habitat is a key to species' survival and that the Services should not alter their existing definition of ''geographical area occupied by the species.'' Commenters stated that changing this definition could have a significant negative impact on habitat conservation. Multiple commenters stated that the existing regulatory definition should not be changed, because it appropriately reflects the importance of wildlife connectivity to the survival of migratory species in particular. Some comments also stated that, because the Services did not propose specific changes to the regulations, they could not provide meaningful comments regarding this regulation.

Response: We are retaining the existing regulatory definition for ''geographical area occupied by the species'' and are not revising the definition as part of this rulemaking.

Comment: Multiple commenters stated that the current regulatory definition for ''geographical area occupied by the species'' inappropriately allows the Services to determine occupancy at the time of listing based on presumed migratory corridors or based on indirect or circumstantial evidence. Several commenters also stated that occupancy should be based on population-level information, and that it cannot be determined based on an ''occurrence'' of a species or on data for individual animals.

Response: Although we requested comment on the definition of the phrase ''geographical area occupied by the species,'' we have decided not to include such a definition in the regulations at this time.

Comment: We received comments stating that the existing regulatory definition for ''geographical area occupied by the species'' could be in conflict with the proposed changes to 50 CFR 424.12(b)(2), where the Secretary is given discretion to designate critical habitat ''at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species only upon a determination that such areas are essential for the conservation of the species.'' In order to remove this conflict commenters suggested removing, ''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).''

Response: The existing regulatory definition for ''geographical area occupied by the species'' is not in conflict with the changes to 50 CFR 424.12(b)(2) regarding the designation of unoccupied areas because areas that are not permanently occupied are still considered occupied for both determining the range of a species and when designating critical habitat. Some areas that may not be permanently occupied by the species may be crucial for a species to complete necessary phases of its life cycle. For example, terrestrial amphibians might only inhabit breeding ponds for a short time of year, but without these ponds the species would not be able to successfully reproduce.

Comment: Some commenters stated that use of the term ''life-cycle'' is confusing and requires further clarification. The commenters noted that a species' occupancy of an area and its habitat needs from such area may fundamentally change depending upon the species' life-cycle stage, and that an area and its supporting habitat features may be ''essential'' to conservation of the species in certain life stages, but not others. The commenters requested that the Services address these complexities by further detailing, in regulatory text, how they will identify the species' life-cycle stages, and habitat features for such life-cycle stages, requiring designation of critical habitat.

Response: While we agree with the comment that a species' distribution and habitat use can change depending upon the particular stages in its life cycle, we disagree that additional clarification within our implementing regulations is required to explain how this possibility will affect the designation of critical habitat. The existing regulatory definition for

''geographical area occupied by the species'' makes clear that any areas used by the species, at any one or more stages of its life history, are considered ''occupied'' areas. To determine what specific areas within the ''geographical area occupied by the species'' meet the definition of critical habitat, the Services must evaluate the best available scientific data regarding that species' habitat requirements. A clear rationale, supported by the best available science, must then be articulated in any subsequent proposed rule to designate critical habitat. The nature and type of areas included in any proposed rule will depend on the particular species and the scientific understanding of that species' habitat needs during its life cycle.

Comments Related to Physical or Biological Features

Comment: We received a number of comments in response to our request for feedback on the existing regulatory definition of ''physical or biological features.'' Several commenters suggested that it would be preferable for the Services to return to the ''primary constituent elements'' approach followed since 1980 and until the 2016 revisions to the Services' implementing regulations, which added the current definition, because the commenters claim that approach requires a higher degree of specificity in describing the attributes of critical habitat and is more consistent and objective than the approach codified in the current regulation.

Response: While the Services understand and agree with the need for as much specificity in the description of the attributes of critical habitat as the best available scientific data allow, we conclude that it is neither necessary nor desirable to revive the prior approach. Over our three decades of experience implementing the prior regulatory provision, the Services found that the ''primary constituent elements'' terminology had unnecessarily complicated implementation of the statutory provision. Also, the language of the ''primary constituent elements'' provision was itself somewhat vague and non-specific. As explained when we proposed to add the regulatory definition of the term ''physical or biological features,'' the ''primary constituent elements'' concept did not have a clear or consistent relationship to the operative statutory language—''physical or biological features'' (see 79 FR 27066 and 27071, May 12, 2014). In shifting away from the term ''primary constituent elements,'' our intent was to simplify the designation process and make it more transparent. We ensured continuity between the prior and current approaches by incorporating some of the previous regulatory language that had described primary constituent elements and emphasizing that designations should continue to be as specific as possible (See 81 FR 7414 and 7426, Feb. 11, 2016) (''The specificity of the primary constituent elements that has been discussed in previous designations will now be discussed in the descriptions of the physical or biological features essential to the conservation of the species.''). Because the statutory term ''physical or biological features'' is the operative concept under the statute, we concluded in our 2016 final rule (and reaffirm) that it is most efficient and transparent to focus on clarifying that concept rather than reintroduce unnecessary and complicated terminology.

Comment: Several commenters suggested that the definition of physical or biological features should focus on those features that are ''essential to the conservation of the species'' rather than those that ''support the life-history needs of the species.'' The commenters stated that ''essential to the conservation of the species'' is a greater biological significance than ''supporting the life-history needs of the species'' and we should not be allowed to designate an area that is of lower significance than ''essential to the conservation of the species.''

Response: As noted above, we have decided to clarify the term ''physical or biological features'' to more specifically track some of the key statutory language from the Act's definition of ''critical habitat.'' We have slightly modified the defined term, which is now ''physical or biological features essential to the conservation of the species.'' In doing so we have focused the definition more precisely on only those features that may be the basis for a designation of occupied critical habitat if the other conditions are met (*i.e.,* that the features are found in specific areas and may require special management considerations or protections). We have made clear that the essential features are only the subset of physical or biological features that are necessary to support the species' life-history needs.

Comment: Several commenters stated that the phrase ''including but not limited to'' in the definition of physical or biological features is too vague or broad and should be removed from the definition.

Response: In defining physical and biological features and including this particular phrase, we provided a non-exhaustive list of examples of types of features and conditions that we have found to be essential to certain species based on experience over many years of designating critical habitat for a wide variety of species. The determination of specific features essential to the conservation of a particular species will be based on the best scientific data available and explained in the proposal to designate critical habitat for that species, which will be available for public comment and peer review.

Comment: Several commenters stated that the Services should not include the phrase ''habitat characteristics that support ephemeral or dynamic habitat conditions'' as a feature that could be considered essential and a basis for designation under section 3(5)(A)(i) of the Act. They stated that the definition goes too far by allowing the Services to include areas that do not currently have the essential physical or biological features necessary for a species, and it improperly allows the critical habitat designation to include areas that may develop the essential features sometime in the future. Further, some stated that it is not clear what is meant by ''habitat characteristics that support ephemeral or dynamic habitat conditions.'' They stated that the language is unbounded, and the Services should define what is meant to support these conditions.

Response: We decline to remove the phrase ''habitat characteristics that support ephemeral or dynamic habitat conditions'' from the definition of physical of biological features. However, our proposed and final rules designating critical habitat for each species always include a detailed explanation of how the essential features relate to the life-history and conservation needs of the species based on the best scientific data available. When considering what features are essential, it is sometimes necessary to allow for the dynamic nature of the habitat, such as seasonal variations in habitat or successional stages of habitat, which could consist of water flow or level changes throughout the year or old-growth habitat or habitat newly formed through disturbance events such as fire or flood events. Thus, the physical or biological features essential to the conservation of the species may include features that support the occurrence of ephemeral or dynamic habitat conditions. The example we gave in the 2016 final rule (81 FR 7430, February 11, 2016) was a species that may require early-successional riparian vegetation in the Southwest to breed or feed. Such vegetation may exist only 5 to 15 years after a local flooding event. The necessary features, then, may include not only the suitable vegetation itself,

but also the flooding events, topography, soil type, and flow regime, or a combination of these characteristics and the necessary amount of the characteristics that can result in the periodic occurrence of the suitable vegetation. The flooding event would not be a subsidiary characteristic, as suggested by the commenter, but would itself be a feature necessary for the vegetation to return. As is our general practice, this type of specificity regarding the features and how they relate to the needs of the species will be clearly explained in each proposed and final rule designating critical habitat.

Comment: Several commenters suggested that we remove ''principles of conservation biology'' from the definition of ''physical or biological features.'' Further, they stated that this theory should not be included in regulations and it creates a higher bar than the best-available-data standard.

Response: The sentence that reads, ''Features may also be expressed in terms of relating to principles of conservation biology, such as patch size, distribution distances, and connectivity'' explains more clearly how we may identify the features. The principles of conservation biology are generally accepted among the scientific community and consistently used in species-at-risk status assessments and development of conservation measures and programs. We stated in the final rule (81 FR 7414, February 11, 2016) that, using principles of conservation biology such as the need for appropriate patch size, connectivity of habitat, dispersal ability of the species, or representation of populations across the range of the species, the Services may evaluate areas relative to the conservation needs of the species. The Services must identify the physical and biological features essential to the conservation of the species and unoccupied areas that are essential for the conservation of the species. When using this methodology to identify areas within the geographical area occupied by the species at the time of listing, the Services will expressly translate the application of the relevant principles of conservation biology into the articulation of the features. Aligning the physical and biological features identified as essential with the conservation needs of the species and any conservation strategy that may have been developed for the species allows us to develop more precise designations that can serve as more effective conservation tools, focusing conservation resources where needed and minimizing regulatory burdens where not necessary. Furthermore, not including widely accepted scientific concepts into our process and procedures for designating critical habitat would amount to ignoring some of the best available scientific data.

Comments on Required Determinations

Comment: Many commenters stated the proposed changes are substantive and will have a significant impact on the environment and, therefore, the Services must comply with NEPA and issue either an environmental assessment or an environmental impact statement (EIS), including a robust set of alternatives. CEQ regulations state that, if a Federal action ''may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the'' Act, that possibility makes it more likely that the action may be considered significant and a full environmental review be conducted. 40 CFR 1508.27(b)(9). Commenters stated the proposed changes constitute a major Federal action because there is ''the possibility that an action may have a significant environmental effect.'' See *Citizens for Better Forestry* v. *USDA,* 481 F. Supp. 2d 1059, 1087 (N.D. Cal. 2007). Furthermore, commenters stated the Services cannot delegate their authority in NEPA by asking the public for opinions regarding whether an EIS is or is not appropriate. Finally, the proposed changes cannot be considered administrative, financial, legal, technical, or procedural in nature and therefore do not qualify for categorical exclusion.

Response: The Services have complied with NEPA by documenting their invocation of the categorical exclusions afforded under their relative procedures, including consideration as to whether the existence of any ''extraordinary circumstances'' would preclude invoking an exclusion here. We have determined that this final regulation is categorically excluded from further NEPA review and that no extraordinary circumstances are present (see Required Determinations, below). We do not consider merely asking the public for input regarding the applicability of an EIS abrogating our authority in complying with the provisions of NEPA, and it has been our practice to do so for similar recent rulemakings.

Comment: Several commenters stated that the proposed rule, if made final, would have significant economic impacts on small business, small government jurisdictions, and small organizations and therefore requires an initial regulatory flexibility analysis and economic analysis under the Regulatory Flexibility Act (RFA).

Response: We interpret the RFA, as amended, to require that Federal agencies evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, not on indirectly regulated entities. Recent case law supports this interpretation (Small Business Association 2012, pages 22–23). NMFS and FWS are the only entities that are directly affected by this rule because we are the only entities that add or remove species from the Lists and designate critical habitat. This rule pertains to the procedures for carrying out those authorities. No external entities, including any small businesses, small organizations, or small governments, will experience any direct economic impacts from this rule (see Required Determinations, *Regulatory Flexibility Act,* below, for certification).

General Comments

Comment: We received many comments on topics that were not specifically addressed in our proposed regulatory amendments, such as recommendations to change our policies on DPSs and the significant portion of a species' range, define ''best available scientific and commercial information,'' modify the Services' implementation of section 6 of the Act, and revise the regulations at § 424.19 regarding how we consider the impacts of the designation of critical habitat.

Response: The Services appreciate the many insightful comments and suggestions we received on various areas of section 4 implementation. While such input may inform the future development of additional regulatory amendments, policies, or guidance, we have determined at this time, in the interests of efficiency, to finalize the revisions for which we specifically proposed regulatory text or on which we sought particular comment (*e.g.,* the term ''physical or biological features''), and to defer action on other issues until a later time. The Services are required only to respond to ''comments which, if true, . . . would require a change in [the] proposed rule,'' *Am. Mining Cong.* v. *United States EPA,* 907 F.2d 1179, 1188 (DC Cir. 1990) (quoting *ACLU* v. *FCC,* 823 F.2d 1554, 1581 (DC Cir. 1987)). Such comments constitute the universe of ''significant'' comments. Therefore, comments that pertain to issues that were not specifically addressed in our proposed regulatory amendments are not ''significant'' in the context of the proposed rule. *See also Home Box Office, Inc.* v. *FCC,* 567 F.2d 9, 35 n. 58 (DC Cir. 1977), *cert. denied,*

485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988). We are not responding to comments that are not ''significant.''

Comment: Some commenters suggested that the Services should delay finalizing the proposed rule until the United States Supreme Court resolves the pending *Weyerhaeuser* litigation (*Weyerhaeuser Co.* v. *U.S. Fish and Wildlife Service,* No. 17–71 (docketed July 13, 2017)) because the Court's analysis of the Act's statutory framework could have implications for the interpretations of the proposed rule. The commenters suggest that waiting until spring 2019 to finalize the rule would allow time to digest the resulting decision, determine its implications for this rulemaking, and make any modifications or take any procedural steps that might be necessary in light of the decision.

Response: The Services carefully evaluated the Supreme Court's recent opinion in the *Weyerhaeuser* litigation. The final rule has been modified in response to the decision to make clear that unoccupied habitat must be ''habitat,'' by requiring reasonable certainty that at least one physical or biological feature essential to the conservation of the species is present. This rule is therefore consistent with the Court's decision. While the Services are considering further clarification of the meaning of habitat through separate rulemaking, we find that the Services' and public's interests are served by clarifying the existing regulatory framework in this final rule without delay.

Comment: Several commenters stated that the proposed regulatory changes to part 424 are an attempt by the Services to expand their own discretion and authority without congressional authorization and thus is neither justified nor lawful.

Response: The amended regulations do not expand the Services' discretion beyond the authority provided in the Act. Rather, they clarify the existing process and, in some instances, narrow the Services' discretion when designating critical habitat based on lessons learned over many years of implementing the Act and relevant case law. The amendments synchronize the language in the implementing regulations with that in the Act to minimize confusion and clarify the discretion and authority that Congress provided to the Secretaries under the Act. The Services are exercising their discretion to resolve ambiguities and fill gaps in the statutory language, and the amended regulations are a permissible interpretation of the statute.

Comment: Several commenters referred to the following statement in the proposed rule: ''the final rule may include revisions to any provisions in part 424 that are a logical outgrowth of this proposed rule.'' The commenters stated that any amendments adopted in the final rule must come from specific proposals announced in the proposed rule and not the Services' open-ended request for suggestions. Furthermore, commenters stated that if the Services make changes based on this open-ended and vague premise, the final rule would fail the logical-outgrowth test and be in violation of the Administrative Procedure Act (APA) because this outcome would deny the public and all stakeholders the opportunity to provide comments regarding these changes.

Response: Although we do not necessarily agree with the commenters' interpretation of the APA, none of the changes we make in this final rule relies upon the assertion in the quoted sentence that the final rule may include changes to ''any provisions in part 424'' not addressed in the proposed rule. The regulatory changes we finalize in this document flow directly from the regulatory provisions in the proposed rule, with modifications made in response to comments as explained throughout this document, and from the Services' specific invitation for public comment on whether they should modify the definition of ''physical or biological features.'' We have determined to reserve for a later date our consideration of, and any action regarding, issues outside the scope of those specific provisions.

Comment: Many commenters had concerns regarding specific proposed changes, calling them arbitrary and capricious and therefore in violation of the APA.

Response: We do not agree with the assertion that the specific proposed changes to our implementing regulations are arbitrary and capricious. We published our proposal, detailed our proposed revised regulation changes, explained our rationale for changes and explicitly asked for public comment. We have now reviewed the public comments and in this final rule have provided responses to significant comments and made some changes in response to those comments as explained throughout this document. As to two issues (the definitions for ''geographical area occupied by the species'' and ''physical or biological features''), we sought specific public comment without proposing regulatory text. In this final rule, we have decided to address one of those issues (the definition of ''physical or biological features essential to the conservation of the species'') through minor regulatory edits that merely incorporate and interpret some of the statutory language from the Act's provision defining occupied critical habitat without substantively changing the meaning or process for identifying occupied critical habitat. We have provided the public with our rationale and a meaningful opportunity to comment on all aspects of the proposed rule. Thus, the process that we used to promulgate this rule complied with the applicable requirements of the APA.

Comment: Several commenters stated that the Services have misled stakeholders and effectively failed to provide adequate notice and opportunity for public comment. The comments assert that we should withdraw our proposal, republish it with a more accurate and clear summary of the changes to the regulations and their implications, and provide further opportunity for public comment.

Response: The Services have not misled stakeholders. We provided a 60-day public comment period on the proposed rule. Following publication of our proposed rule, we held numerous webinars providing an opportunity for States, tribes, non-governmental organizations, and industry groups to ask questions and provide input directly to the Services. This process satisfies the Services' obligation to provide notice and comment under the APA.

Comment: Several tribes commented that traditional ecological knowledge should constitute the best scientific data available and be used by the Services.

Response: Traditional ecological knowledge (TEK) is important and useful information that can inform us as to the status of a species, historical and current trends, and threats that may be acting on it or its habitat. The Services have often used TEK to inform decisions under the Act regarding listings, critical habitat, and recovery. The Act requires that we use the best scientific and commercial data available to inform decisions to list a species and the best scientific data available to inform designation of critical habitat, and in some cases TEK may be included as part of what constitutes the best data available. However, the Services cannot predetermine, as a general rule, that TEK will be the best available data in every rulemaking. We will continue to consider TEK along with other available data, weighing all data appropriately in the decision process.

Comment: A State agency requested that we codify a requirement for consultation with affected State wildlife management agencies, giving effect to

the statutory language contained in section 7(a)(2) of the Act to consult with the affected States on critical habitat designations, as appropriate, to interpret inconclusive information, particularly involving individuals.

Response: We do not agree that additional requirements are needed to give effect to the statutory language in section 7(a)(2) regarding consulting affected States prior to designating critical habitat. The nature of this required consultation is already articulated in section 4(b)(5)(A)(ii), which requires the Secretary to give actual notice of any proposed critical habitat designation to the appropriate State agencies and invite their comment on the proposed designation. The Services will continue to meet this requirement.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is 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 rule in a manner consistent with these requirements. This rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Executive Order 13771

This rule is an Executive Order 13771 deregulatory action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *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, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

This rulemaking revises and clarifies requirements for NMFS and FWS regarding factors for listing, delisting, or reclassifying species and designating critical habitat under the Endangered Species Act to reflect agency experience and to codify current agency practices. The changes to these regulations do not expand the reach of species protections or designations of critical habitat.

NMFS and FWS are the only entities that are directly affected by this rule because we are the only entities that list species and designate critical habitat under the Endangered Species Act. No external entities, including any small businesses, small organizations, or small governments, will experience any economic impacts from this rule. At the proposed rule stage, we certified that this rule would not have a significant economic effect on a substantial number of small entities. Nothing in this final rule changes that conclusion.

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.*):

(a) On the basis of information contained in *Regulatory Flexibility Act,* above, this rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the rule would not place additional requirements on any city, county, or other local municipalities.

(b) This rule would not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, this rule is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This rule would impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule would not have significant takings implications. This rule would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of endangered species and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule would have significant federalism effects and have determined that a federalism summary impact statement is not required. This rule pertains only to factors for listing, delisting, or reclassifying species and designation of critical habitat under the Endangered Species Act, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This rule would clarify factors for listing, delisting, or reclassifying species and designation of critical habitat under the Endangered Species Act.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' the Department of the Interior's manual at 512 DM 2, and the Department of

Commerce (DOC) ''Tribal Consultation and Coordination Policy'' (May 21, 2013), DOC Departmental Administrative Order (DAO) 218–8, and NOAA Administrative Order (NAO) 218–8 (April 2012), we have considered possible effects of this final rule on federally recognized Indian Tribes. Two informational webinars were held on July 31 and August 7, 2018, to provide additional information to interested Tribes regarding the proposed regulations. After the opening of the public comment period, we received multiple requests for coordination or Government-to-Government consultation from multiple tribes: Cowlitz Indian Tribe; Swinomish Indian Tribal Community; The Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of Warm Springs, Oregon; Quinault Indian Nation; Makah Tribe; and the Suquamish Tribe. We subsequently hosted a conference call on November 15, 2018, to listen to Tribal concerns and answer questions about the proposed regulations. On March 6, 2019, Service representatives attended the Natural Resources Committee Meeting of the United and South and Eastern Tribes' Impact Week conference in Arlington (Crystal City), VA. At this meeting, we presented information, answered questions, and held discussion regarding the regulatory changes.

The Services conclude that the changes to these implementing regulations make general changes to the Act's implementing regulations and do not directly affect specific species or Tribal lands or interest. These regulations streamline and clarify the processes for listing species and designating critical habitat and directly affect only the Services. With or without these regulatory revisions, the Services would be obligated to continue to list species and to designate critical habitat based on the best available data. Therefore, we conclude that these regulations do not have ''tribal implications'' under section 1(a) of E.O. 13175, and formal government-to-government consultation is not required by the Executive order and related policies of the Departments of Commerce and the Interior. We will continue to collaborate with Tribes on issues related to federally listed species and their habitats and work with them as we implement the provisions of the Act. *See* Joint Secretarial Order 3206 (''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'', June 5, 1997).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State, local, or Tribal governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We analyzed this final rule in accordance with the criteria of NEPA, the Department of the Interior regulations on implementation of NEPA (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 8), the NOAA Administrative Order 216–6A, and the Companion Manual, ''Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities,'' which became effective January 13, 2017. We have determined that the final regulation is categorically excluded from further NEPA review and that no extraordinary circumstances are present. The rule qualifies for the substantially similar categorical exclusions set forth at 43 CFR 46.210(i) and NOAA Administrative Order 216–6A and Companion Manual at Appendix E (Exclusion G7).

These revisions are an example of an action that is fundamentally administrative, legal, technical, or procedural in nature. The revisions go no further than to clarify the existing regulations and make them more consistent with the statutory language, case law, and plain-language standards. They are an effort to streamline and clarify the procedures and criteria that the Services use for listing or delisting species and for designating critical habitat. These revisions directly affect only the FWS and NMFS, which are the agencies charged with implementing the provisions of the statute, and they do not affect any specific areas. Specifically, rather than substantively changing the status quo, the effect of these revisions is to respond to court decisions and articulate the Services' understanding and practice with respect to the statutory provisions for listing species and designating critical habitat. Further, the Services must still continue to list species and to designate critical habitat based on the best available scientific information, with or without these regulatory revisions. Finally, none of these revisions will affect the opportunity for public involvement in, or outcome of, either agency's decisions on listing species or designating critical habitat.

We also considered whether any ''extraordinary circumstances'' apply to this situation, such that the DOI categorical exclusion would not apply. See 43 CFR 46.215 (''Categorical Exclusions: Extraordinary Circumstances''). We have determined that none of the circumstances apply to this situation. Although the final regulations would revise the implementing regulations for section 4 of the Act, the effects of these changes would not ''have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species,'' as the effect of the revisions is to provide transparency about the Services' implementation of the Act based upon court decisions and the Services' understanding and practices. Furthermore, the revised regulations do not ''[e]stablish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects'' (43 CFR 46.215(e)), as any future listing, classification, or delisting decisions will continue to be based on the best available scientific information presented in a particular record. None of the extraordinary circumstances in 43 CFR 46.215(a) through (l) apply to the revised regulations in 50 CFR 17.31 or 17.71. Nor would the final regulations trigger any of the extraordinary circumstances under NOAA's Companion Manual to NAO 216–6A. This rule does not involve: (a) Adverse effects on human health or safety that are not negligible or discountable; (b) adverse effects on an area with unique environmental characteristics (*e.g.,* wetlands and floodplains, national marine sanctuaries, or marine national monuments) that are not negligible or discountable; (c) adverse effects on species or habitats protected by the ESA, the MMPA, the MSA, NMSA, or the Migratory Bird Treaty Act that are not negligible or discountable; (d) the potential to generate, use, store, transport, or dispose of hazardous or toxic substances, in a manner that may have a significant effect on the environment; (e) adverse effects on properties listed or eligible for listing on the National Register of Historic Places authorized by the National Historic Preservation Act of 1966, National Historic Landmarks designated by the Secretary of the Interior, or National Monuments designated through the Antiquities Act of 1906; Federally

recognized Tribal and Native Alaskan lands, cultural or natural resources, or religious or cultural sites that cannot be resolved through applicable regulatory processes; (f) a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities; (g) contribution to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species; (h) a potential violation of Federal, State, or local law or requirements imposed for protection of the environment; (i) highly controversial environmental effects; (j) the potential to establish a precedent for future action or an action that represents a decision; in principle about future actions with potentially significant environmental effects; (k) environmental effects that are uncertain, unique, or unknown; or (l) the potential for significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

FWS completed an Environmental Action Statement, which NOAA adopts, explaining the basis for invoking the agencies' substantially similar categorical exclusions for the regulatory revisions to 50 CFR 424.02, 424.11 and 424.12. The environmental action statement is available at *http://www.regulations.gov* in Docket No. FWS–HQ–ES–2018–0006.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. The revised regulations are not expected to affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

Authority

We issue this rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened species.

Regulation Promulgation

For the reasons set out in the preamble, we hereby amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

■ 1. The authority citation for part 424 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. Amend § 424.02 by removing the definition of ''Physical or biological features'' and in its place adding a definition for ''Physical or biological features essential to the conservation of the species'' to read as follows:

§ 424.02 Definitions.

* * * * *

Physical or biological features essential to the conservation of the species. 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.

* * * * *

■ 3. Amend § 424.11 by revising paragraphs (b) through (f) and adding paragraph (g) to read as follows:

§ 424.11 Factors for listing, delisting, or reclassifying species.

* * * * *

(b) The Secretary shall make any determination required by paragraphs (c), (d), and (e) of this section *solely* on the basis of the best available scientific and commercial information regarding a species' status.

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species meets the definition of an endangered species or a threatened species because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

(d) In determining whether a species is a threatened species, the Services must analyze whether the species is likely to become an endangered species within the foreseeable future. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. The Services will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The Services need not identify the foreseeable future in terms of a specific period of time.

(e) The Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available:

(1) The species is extinct;

(2) The species does not meet the definition of an endangered species or a threatened species. In making such a determination, the Secretary shall consider the same factors and apply the same standards set forth in paragraph (c) of this section regarding listing and reclassification; or

(3) The listed entity does not meet the statutory definition of a species.

(f) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see part 23 of this title) or a similar international agreement on such species, or has been identified as requiring protection from unrestricted commerce by any foreign nation, or to be in danger of extinction or likely to become so within the foreseeable future by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish, wildlife, or plants, may constitute evidence that the species is endangered or threatened. The weight given such evidence will vary depending on the international agreement in question, the criteria pursuant to which the species is eligible for protection under such authorities, and the degree of protection afforded the species. The Secretary shall give consideration to any species protected under such an international agreement, or by any State or foreign nation, to determine whether the species is endangered or threatened.

(g) The Secretary shall take into account, in making determinations under paragraph (c) or (e) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

■ 4. Amend § 424.12 by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 424.12 Criteria for designating critical habitat.

(a) * * *

(1) 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.

* * * * *

(b) * * *

(2) The Secretary will designate as critical habitat, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species only upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

* * * * *

Dated: August 12, 2019.

David L. Bernhardt,

Secretary, Department of the Interior.

Dated: August 9, 2019.

Wilbur Ross,

Secretary, Department of Commerce.

[FR Doc. 2019–17518 Filed 8–26–19; 8:45 am]

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H.R. 639/P.L. 116–48
To amend section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to clarify that National Urban Search and Rescue Response System task forces may include Federal employees. (Aug. 22, 2019; 133 Stat. 1071)

H.R. 776/P.L. 116–49
Emergency Medical Services for Children Program Reauthorization Act of 2019 (Aug. 22, 2019; 133 Stat. 1072)

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Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (Aug. 22, 2019; 133 Stat. 1073)

H.R. 2336/P.L. 116–51
Family Farmer Relief Act of 2019 (Aug. 23, 2019; 133 Stat. 1075)

H.R. 2938/P.L. 116–52
Honoring American Veterans in Extreme Need Act of 2019 (Aug. 23, 2019; 133 Stat. 1076)

H.R. 3304/P.L. 116–53
National Guard and Reservists Debt Relief Extension Act of 2019 (Aug. 23, 2019; 133 Stat. 1078)

H.R. 3311/P.L. 116–54
Small Business Reorganization Act of 2019 (Aug. 23, 2019; 133 Stat. 1079)

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