



FEDERAL REGISTER

Vol. 84

Wednesday,

No. 191

October 2, 2019

Pages 52357–52746

OFFICE OF THE FEDERAL REGISTER



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Federal Register

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 213, 214, 245 and 248

[CIS No. 2637–19; DHS Docket No. USCIS–2010–0012]

RIN 1615–AA22

Inadmissibility on Public Charge Grounds; Correction

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule; correction.

SUMMARY: The Department of Homeland Security (DHS) is making corrections to a final rule that appeared in the *Federal Register* on August 14, 2019. That final rule will amend DHS regulations by prescribing how DHS will determine whether an alien applying for admission or adjustment of status is inadmissible to the United States under the Immigration and Nationality Act (INA or the Act) because he or she is likely at any time to become a public charge.

DATES: This correction is effective at 12 a.m. Eastern Time on October 15, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Phillips, Residence and Naturalization Division Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts NW, Washington, DC 20529–2140; telephone 202–272–8377.

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 2019, DHS published a final rule, Inadmissibility on Public Charge Grounds (FR Doc. 19–17142).¹ The final rule amends DHS regulations by prescribing how DHS will determine whether an alien applying for admission or adjustment of status is inadmissible to the United States under section 212(a)(4) of the Immigration and

Nationality Act (INA or the Act), 8 U.S.C. 1182(a)(4), because he or she is likely at any time to become a public charge.

In the final rule, there were a number of technical and typographical errors that are identified and corrected by the Correction of Errors section of this correcting document. The provisions in this correcting document are effective as if they had been included in the final rule document that appeared in the August 14, 2019 *Federal Register*. Accordingly, the corrections are effective on October 15, 2019, at 12:00 a.m. Eastern Time. This document, and the corrections included in this document, do not change how DHS will apply the final rule; *i.e.*, DHS will apply the corrected final rule only to applications and petitions postmarked (or, if applicable, submitted electronically) on or after October 15, 2019. Applications and petitions already pending with USCIS on October 15, 2019, (*i.e.*, postmarked before October 15, 2019) will not be subject to the final rule.

II. Summary and Explanation of Corrections

A. Summary

On page 41292 in the **SUMMARY** section, in the last sentence of the first partial paragraph at the top of the second column, DHS erroneously referred to “exemptions” when referring to special rules applying to the receipt of public benefits by certain populations. DHS is making corrections to that sentence through the Correction of Errors section of this document by replacing the word “exemptions” with the word “exclusions,” when referencing receipt of public benefits that will not be considered for the purposes of this rule. An exemption refers to individuals who are not subject to this rule, as set forth in 8 CFR 212.23, while an exclusion, the correct terminology for purposes of the subject rulemaking, refers to benefits receipt that will not be considered by DHS.

B. Preamble of the August 14, 2019 Final Rule

On page 41296 in the *Summary of the Proposed Rule*, in the third column, in the last paragraph, in the first line of the last full sentence, DHS erroneously used the word “exempt” instead of the word “exclude” when indicating that receipt

of Medicaid benefits received by certain children of U.S. citizens would not be considered for purposes of a public charge inadmissibility determination. DHS is correcting this reference and replacing the word “exempt” with the word “exclude” in the Correction of Errors section of this document.

On page 41297, in the third line at the top of the first column, DHS erroneously referred to the word “exempting” when discussing a change in the final rule that expands the exclusion from consideration of receipt of Medicaid to Medicaid received by aliens under the age of 21 and pregnant women (including women for 60 days after the last day of pregnancy). In the Correction of Errors section of this document, DHS is correcting this error by revising this sentence.

On page 41302 in Table 1–Summary of Major Provisions and Economic Impacts of the Final Rule, fourth row, third column, DHS erroneously stated that the “total annual direct costs of the final rule will range from about \$45.5 to \$131.2 million.” The statement was inadvertently left in Table 1 even after costs of the rule were updated elsewhere in the final rule and the Regulatory Impact Analysis to reflect that DHS will not be requesting Form I–944 from applicants for extension of stay and change of status. DHS is removing the incorrect cost range statement through the Correction of Errors section of this document.

On page 41314, DHS inadvertently added footnote 83 the end of the last sentence of the second paragraph in the third column. For editorial consistency, DHS is deleting this footnote through the Correction of Errors section of this document.

On page 41328, in the second column, DHS inadvertently omitted the word “it” from the first sentence in the third paragraph. DHS is adding that word through the Correction of Errors section of this document.

On page 41334 at the top of the second column, first line, the word “the” was inadvertently excluded. DHS is therefore correcting this omission by adding the word “the.”

On page 41334 in the last sentence of the first partial paragraph in the second column in the comment response, DHS inadvertently left in a word “may” in addition to the word “will” when describing the impact of the public

¹ 84 FR 41292 (Aug. 14, 2019).

charge rule on certain dependents who are certified to receive or are receiving public benefits under the authorization of another person. This word is superfluous and makes the sentence grammatically incorrect. DHS is correcting this error by deleting the word “may.”

On page 41336 in the first column, in the third sentence, DHS inadvertently omitted words “time the” after “valid T nonimmigrant status at the,” making the sentence incomplete. DHS is therefore correcting this omission by adding the words “time the.”

On pages 41336 through 41341, in the heading for the third column that appears at the top of Table 2 on each page, DHS is correcting the title of the heading to accurately reflect the form numbers used to request change of status. DHS inadvertently referred to Form I-539 as “I-Form 539” in the heading and is correcting that reference to read “Form I-539.”

On page 41336, in the first row and third column of Table 2, DHS inadvertently omitted the word “Form” before “I-539.” DHS is correcting this omission by adding the word “Form.”

On page 41337, in the twelfth row and second and third columns of Table 2, DHS inadvertently omitted the word “Form” before “I-539.” DHS is correcting this omission by adding the word “Form.”

On page 41338, in the eleventh row and third column of Table 2, DHS inadvertently omitted the word “Form” before “I-539.” DHS is correcting this omission by adding the word “Form.”

On page 41338, in the fifteenth row and second column of Table 2, DHS inadvertently omitted the word “Form” before “I-539” and a comma after “I-539”. DHS is correcting these omissions by adding the word “Form” before “I-539” and “,” after “I-539”.

On page 41340, in the tenth row and third column of Table 2, DHS inadvertently added the word “Files” twice.

On page 41340, in the eleventh row and third column of Table 2, DHS inadvertently added the word “Files” twice.

On page 41341, at the bottom of Table 2 after the “*”, DHS made several typographical errors. DHS is correcting those errors and the sentence after the “*” will read: “Includes questions on Form I-129 and Form I-539 about receipt of public benefits since the nonimmigrant status was approved. Whether the alien must file a Form I-129 or a Form I-539 depends on the status the alien is applying to change or to extend. If more than one person is applying using the Form I-539, the

Form I-539A, Supplemental Information for Application to Extend/Change Status, is submitted to provide all of the requested information for each additional applicant listed.”

On page 41342 at the bottom of Table 3 after the “*”, DHS made several typographical errors by referring to the proposed rule rather than the final rule and by not including all the conditions set forth in the final rule upon which a public charge bond may be cancelled. DHS is correcting these errors and the sentence after the “*” will read: “If an alien is found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). 8 CFR 213.1, as amended in the final rule, describes the circumstances under which a public charge bond may be cancelled (Form I-356).” DHS is making the same corrections to similar errors on page 41343 at the bottom of Table 4 after the “*”, on page 41344 at the bottom of Table 5 after the “*”, on page 41345 at the bottom of Table 6 after the “*”, and on page 41346 at the bottom of Table 7 after the “*.”

On page 41345 in Table 7 Applicability of INA 212(a)(4) to Other Applicants Who Must Be Admissible, in the fourth row, first and second columns, DHS is correcting the language regarding the availability of waivers with respect to certain entrants (*i.e.*, certain aged, blind, or disabled individuals), and is reorganizing the order in which the explanation appears in the second column.

On page 41369, in the first paragraph in the third column, DHS inadvertently omitted the words “and non-cash benefits” when generally describing the public benefits included in the rule. DHS is adding these words to correctly characterize that non-cash benefits included in this rule are those being provided for food, nutrition, housing, and healthcare. This correction is made for consistency with a similar reference on p. 41349 of the final rule.² On pages 41380–41381, in the first sentence starting in the last paragraph on p. 41380, DHS inadvertently omitted the words “and non-cash benefits” when generally describing the public benefits included in the rule. DHS is adding these words to correctly characterize that non-cash benefits included in this

² See *e.g.*, p. 84 FR 41292, 41349 “Because of the nature of the benefits that would be considered under this rule—*i.e.*, cash benefits for income maintenance and non-cash benefits for basic living needs such as food and nutrition, housing, and healthcare, that account for significant public expenditures on non-cash benefits—DHS believes that receipt of such benefits for more than 12 months within any 36-month period is sufficient to render a person a public charge.”

rule are those being provided for food, nutrition, housing, and healthcare. This correction is made for consistency with a similar reference on p. 41349 of the final rule.

On pages 41486–41488, DHS included typographical errors in the Table numbers. The Table that begins on page 41486 and printed through page 41488 should read “Table 7” instead of “Table 2.” On page 41486, third column, last full sentence prior to the table, DHS needs to make corresponding corrections to the text so that it references “Table 7” instead of “Table 2.” On page 41487, in Table 2—Summary of Major Changes and Economic Impacts of the Final Rule, third row, third column, DHS erroneously stated that the total annual direct cost of the final rule will range from about \$45.5 to \$131.2 million. The statement was inadvertently left in Table 2 even after costs of the rule were updated elsewhere in the rule and the Regulatory Impact Analysis to reflect that DHS will not be requesting Form I-944 from applicants for extension of stay and change of status. DHS is removing the incorrect cost range statement through the Correction of Errors section in this correction notice.

On page 41488, DHS is correcting and renumbering “Table 8—OMB A-4 Accounting Statement” to read “Table 9—OMB A-4 Accounting Statement.” DHS is also making corresponding changes to the reference to “Table 8” on page 41488 in the second column, last full sentence so that the sentence refers the reader to what will now be “Table 9.”

On pages 41493, in the third column, in the last full sentence, DHS is renumbering the tables to correct a typographical error earlier in the final rule. As such, the last full sentence on page 41493 should refer the reader to “Table 10” instead of “Table 9.”

On pages 41494–41497, “Table 9—Summary of Forms” is being corrected to read “Table 10—Summary of Forms.”

C. Regulatory Text of the August 14, 2019 Final Rule

On page 41501, in paragraph (b)(7) of section 8 CFR 212.21, in the provisions excluding public benefits receipt from consideration, rather than referring to spouses and children of individuals serving in the U.S. Armed Forces, DHS inadvertently referred to spouses and children of aliens serving in the U.S. Armed Forces. DHS thereby inadvertently afforded the exclusion only to spouses and children of aliens serving in the U.S. Armed Forces but not to spouses and children of all individuals serving in the U.S. Armed

Forces, including aliens, U.S. citizens, and U.S. nationals serving in the U.S. Armed Forces. DHS correctly discussed the exclusion in broader terms, referring to spouses and children of “servicemembers” generally in the preamble of the final rule, and to spouses and children of “individuals” in the Form I-944, Declaration of Self Sufficiency.³ Therefore, DHS has revised and restructured paragraph (b)(7) to correctly reflect the scope of the exclusion and refer to spouses and children of “individuals” enlisted in, or serving in active duty or the Ready Reserve component of, the U.S. Armed Forces in this correction document. DHS also made edits to explicitly address the timing aspect of the exclusion when a public benefit is received by spouses and children of servicemembers. Namely, the benefit receipt would be excluded from consideration if the individual whose spouse or child received the benefit was enlisted in, or served in active duty or the Ready Reserve at the time of receipt of the public benefit by his or her spouse or child, or at the time of filing or adjudication of the spouse’s or child’s application for admission or adjustment of status, or application or request for extension of stay or change of status. See 84 FR at 41297, 41372.

On page 41502, in the first column, in line 2 of paragraph (d)(1)(iii), DHS inadvertently omitted the word “section” after “as defined in.” On the same page, in the first column, DHS inadvertently used the word “children’s” in paragraph (d)(1)(iv), between the words “percent of” and “financial support”, and omitted a comma between the phrase “as evidenced by a child support order or agreement” and before the phrase “a custody order or agreement.” Finally, on the same page, in the second column, line 1 of paragraph (d)(2)(vii), DHS inadvertently used the word “individual(s)” instead of the word

“individuals,” and “such individual’s financial support or who is listed” instead of “each individual’s financial support, or who is listed”. DHS is correcting these errors.

On page 41502, in the second column, in paragraph (a) of section 8 CFR 212.22, DHS inadvertently omitted the phrase explaining the aggregation of public benefits for purposes of the duration threshold. This parenthetical was included throughout the preamble, e.g., page 41295, 41300, 41329, 41331, 41397, 41454, and 41455. DHS is therefore correcting this omission by including the parenthetical language “(such that, for instance, receipt of two benefits in one month counts as two months)” at the end of the first sentence.

On page 41503, DHS inadvertently made several typographical errors. In the second column, at the end of paragraph (b)(4)(i)(D), DHS inadvertently added the word “whether” after the word “and.” In the second column, at the end of paragraph (b)(4)(ii)(A)(2), DHS inadvertently added a “.” DHS is replacing it with a “;”. Finally, in the third column, at the end of paragraph (b)(4)(ii)(F), DHS inadvertently added a “.” DHS is replacing it with a “;”.

On page 41504, in the first column, paragraph (b)(5)(ii)(C), in the third line, DHS inadvertently added the word “and” after the word “licenses;”. In the first column, paragraph (b)(5)(ii)(D), at the end of the third line of (D), DHS inadvertently placed a “.” instead of an “; and”. In the first column, in line 5 of paragraph (b)(6)(i), DHS inadvertently added the word “for” before the word “himself”. In the first column in paragraph (b)(7), DHS inadvertently designated paragraphs (ii)(A) through (C) as paragraphs (i)(A) through (C). DHS is correcting these errors.

On page 41504, in the second column, in paragraph (c)(1)(ii) of 8 CFR 212.22, DHS inadvertently omitted the phrase explaining the aggregation of public benefits for purposes of the duration threshold. Therefore, DHS is correcting this omission by including the parenthetical language “(such that, for instance, receipt of two benefits in one month counts as two months)” after the word “period” in paragraph 212.22(c)(1)(ii).

On page 41505, in the second column, at the end of paragraph (a)(19)(ii), DHS inadvertently placed a “.” instead of a “;”. DHS is correcting this error.

On page 41506, in the first column, in line 7 of paragraph (b), DHS omitted a reference to paragraph “(c)(1)” after “212.22”. In the first column, in line 14 of paragraph (c), DHS inadvertently

added a “,” between the words “equivalent” and “is”. Finally, in the first column, in paragraph (d) of 8 CFR 213.1, DHS inadvertently included the phrase “within any 364month period” instead of “within any 36-month period” after the clause “for more than 12 months in the aggregate”, and included a “,” instead of a “)” after the words “two months”. DHS is correcting these errors.

On page 41507, in the first column, in section 8 CFR 213.1(h)(2)(i), rather than referring to spouses and children of individuals serving in the U.S. Armed Forces in the provisions pertaining to the public benefits receipt exclusion, DHS inadvertently referred to spouses and children of aliens serving in the U.S. Armed Forces. As noted above with respect to corrections on page 41501, this inadvertently rendered the public benefits receipt exclusion applicable only to spouses and children of aliens serving in the U.S. Armed Forces, but not to spouses and children of all individuals serving in the U.S. Armed Forces, including aliens, U.S. citizens, and U.S. nationals serving in the U.S. Armed Forces.⁴ In this correction document, consistent with the aforementioned correction, DHS is replacing the phrase “such an individual’s spouse or child as defined in section 101(b) of the Act” in the last sentence of 8 CFR 213.1(h)(2)(i) with the phrase “a spouse or child, as defined in section 101(b) of the Act, of an individual enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), or of an individual serving in active duty or in the Ready Reserve component of the U.S. Armed Forces.” DHS also made other edits in paragraph (h)(2)(i) to more appropriately address the timing aspect of this exclusion and added an additional sentence to clearly state that benefits received *after* the alien, or individual (in the case of a spouse or child) who previously enlisted and/or served in the U.S. Armed Forces, separated from service would be considered for purposes of a public charge breach determination.

On page 41508, in columns two and three, in paragraphs (a) and (c)(4) of 8

³ See, e.g., 84 FR 41292, 41372 (“As noted in the NPRM, following consultation with DOD, DHS has concluded that such an outcome (i.e., considering public benefits received by servicemembers in the public charge determination) may give rise to concerns about servicemembers’ immigration status or the immigration status of servicemembers’ spouses and children as defined in section 101(b) of the Act, 8 U.S.C. 1101(b), which would reduce troop readiness and interfere significantly with U.S. Armed Forces recruitment efforts. This exclusion is consistent with DHS’s longstanding policy of ensuring support for our military personnel who serve and sacrifice for our nation, and their families, as well as supporting military readiness and recruitment. Accordingly, DHS has excluded the consideration of the receipt of all benefits listed in 8 CFR 212.21(b) from the public charge inadmissibility determination, when received by active duty servicemembers, including those in the Ready Reserve, and their spouses and children.”).

⁴ In the bond breach provisions in the NPRM and the Final Rule, DHS consistently excluded from consideration for bond breach purposes those public benefits that DHS proposed to exclude from the public charge inadmissibility determination, as outlined in 8 CFR 212.21(b). See, e.g., 84 FR 41292, 41455 (“In particular, public benefits that are exempt from being considered, as outlined in 8 CFR 212.21(b), including while present in a status exempt from public charge, do not count towards the breach determination as explained in the NPRM.”); see also, e.g., 83 FR 51114, 51225 (Oct. 10, 2018).

CFR 248.1, DHS inadvertently omitted a reference to “or that section has been waived,” and “or where the public charge inadmissibility ground has been waived” when describing when the public benefit condition would not apply in the context of change of status petitions or applications. In contrast, these references to the waiver were included in section 8 CFR 214.1 when addressing extensions of stay petitions or applications.⁵ DHS never intended to treat extensions of stay and changes of status differently in this regard, and had described in both the notice of proposed rulemaking and the final rule that the public benefits condition applies unless the alien is exempt from section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), or that section has been waived. Therefore, DHS is adding this reference to the waiver to both paragraph (a) and paragraph (c)(4) of 8 CFR 248.1. DHS is also correcting 8 CFR 248.1(c)(4) to state, consistent with the preamble, that the condition does not apply to change of status of applications if either the current or the future nonimmigrant classification is exempt from public charge. The final rule text was unclear whether it applies to current or future classification or both, although the preamble did indicate it applied to both.⁶

In addition to these corrections, DHS is making a number of minor technical and typographical corrections to the regulatory text as listed in the Correction of Errors section of this document.

III. Explanation of New Technical Amendment

When DHS amended section 8 CFR 248.1 by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), and adding a new paragraph (b), DHS did not make conforming technical changes to paragraph (h)(20) of section

8 CFR 214.2, which cross references paragraph (b) of section 8 CFR 248.1. DHS is adding a technical amendment through new amendatory language to correct the cross reference in paragraph (h)(20) of section 8 CFR 214.2 and refer to 8 CFR 248.1(c) rather than 248.1(b).

IV. Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. 5 U.S.C. 553(b). In addition, section 553(d) of the APA requires agencies to delay the effective date of final rules by a minimum of 30 days after the date of their publication in the **Federal Register**. 5 U.S.C. 553(d). Both of these requirements can be waived if an agency finds, for good cause, that the notice and comment process and/or delayed effective date is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice. 5 U.S.C. 553(b)(B), (d)(3).

DHS believes there is good cause for publishing this correction document without prior notice and opportunity for public comment and with an effective date of less than 30 days because DHS finds that such procedures are unnecessary. This document corrects technical and typographic errors in the preamble (including tables) and regulatory text, but does not make substantive changes to the policies that were adopted in the final rule. This document merely conforms erroneous portions of the final rule to the agency’s clearly expressed contemporaneous intent. As a result, this correcting document’s sole function is to ensure that the information in the August 14, 2019 final rule accurately reflects the policies adopted in that final rule, prior

to which DHS issued a notice of proposed rulemaking and received public comment. Therefore, DHS believes that it has good cause to waive the notice and comment and effective date requirements of section 553 of the APA.

V. Correction of Errors and Technical Amendment

Accordingly, the final rule at 84 FR 41292 (FR Doc. 19–17142) is corrected as follows:

A. Correction of Error in the Summary

1. On page 41292 in the **SUMMARY** section, in first partial paragraph at the top of the second column, revise the last sentence to read: “Aliens who might qualify for these exclusions from consideration of receipt of public benefits should study the rule carefully to understand how the exclusions work.”

B. Correction of Errors in the Preamble

DHS is making the following corrections in the Supplementary Information section of the August 14, 2019 final rule.

1. On page 41296 in the third column, in the last full paragraph, in the first line, replace the word “exempt” with the word “exclude” to read: “Lastly, DHS proposed to exclude . . .”

2. On page 41297, in the third line at the top of the first column, replace the word “exempting” with the word “excluding” to read: “* * * excluding Medicaid receipt by aliens under the age of 21 and pregnant women (including women for 60 days after the last day of pregnancy).”

3. On page 41302, Table 1—Summary of Major Provisions and Economic Impacts of the Final Rule, the fourth row is corrected to read as follows:

<p>Amending 8 CFR 245. Adjustment of status to that of person admitted for lawful permanent residence.</p>	<p>To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.</p>	<p>Quantitative: Costs <ul style="list-style-type: none"> • \$25.8 million to applicants who must file Form I–944; • \$0.69 million to applicants applying to adjust status using Form I–485 with an increased time burden; • \$0.34 million to public charge bond obligors for filing Form I–945; and • \$823.50 to filers for filing Form I–356. Total costs over a 10-year period will range from: <ul style="list-style-type: none"> • \$352.0 million for undiscounted costs; • \$300.1 million at a 3 percent discount rate; and • \$247.2 million at a 7 percent discount rate. </p>
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4. On page 41314, delete footnote 83 at the end of the last sentence of the

second paragraph in the third column,

and renumber footnotes 84 through 867, as footnotes 83 through 866.

⁵ See proposed 8 CFR 214.1(a)(3)(iv) at 83 FR 51114, 51295, and see final 8 CFR 214.1(a)(3)(iv) at 84 FR 41292, 41507.

⁶ See 84 FR 41292, 411329 (“If the nonimmigrant status the individual seeks to extend or to which the applicant seeks to change is statutorily exempt

from the public charge ground of inadmissibility, then the public benefits condition will not apply.”).

5. On page 41328 in the second column, add the word “it” between the words “that” and “does” and move “,” from after the word “so” to after the word “rule” to read: “DHS notes that it does have the authority to define public charge as it has in this rule, and in doing so decide which public benefits are considered for the purposes of this rule.”

6. On page 41334, at the top of the second column, adding the word “the” to correct the first line to read: “be subject to the public charge ground of inadmissibility and which are exempt.”

7. On page 41334, in the second column, in the last sentence of the first partial paragraph in the second column that continues the comment response, correct the sentence to read: “DHS acknowledges that those dependents who are certified for or receiving public benefits under the authorization of another, such as the head of the household or the guardian, may be unaware of the receipt of public benefits but will, once the rulemaking is effective, be impacted by such receipt of public benefits, if they are subject to the public charge ground of inadmissibility.”

8. On page 41336 in the first column, correct the third sentence only (footnote 228 remains unchanged), to read: “For the reasons stated above, DHS is amending proposed 8 CFR 212.23(a)(17) in this final rule to clarify that T nonimmigrants seeking any immigration benefit subject to section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4)—except those described in section 212(a)(4)(D) of the Act, 8 U.S.C. 1182(a)(4)(D), who must file an affidavit of support—are exempt from the public charge ground of inadmissibility, provided that the T nonimmigrant seeking the immigration benefit is in valid T nonimmigrant status at the time the benefit request is properly filed with USCIS, and at the time the benefit request is adjudicated.”

9. On pages 41336 through 41341, in the heading for the third column that appears at the top of Table 2 on each

page, correct the title of the heading to read: “Eligible to apply for change of status (*i.e.*, may file Form I-129 or Form I-539)”.

10. On page 41336, in the first row and third column of Table 2, correct the omission of the word “Form” before “I-539” by adding the word “Form” for the entry to read: “Yes. Files Form I-539, 8 CFR 248.1(a).”

11. On page 41337, in the twelfth row and second and third columns of Table 2, correct the omission of the word “Form” before “I-539” by adding the word “Form” for the entry to read: “Yes. Files Form I-539, 8 CFR 248.1(a).”

12. On page 41338, in the eleventh row and third column of Table 2, correct the omission of the word “Form” before “I-539” by adding the word “Form” for the entry to read: “Yes, subject to receiving a waiver of the foreign residence requirement, if necessary, Files Form I-539.”

13. On page 41338, in the fifteenth row and second column of Table 2, correct the omission of the word “Form” before “I-539” by adding the word “Form” and a “,” after “I-539”, for the entry to read: “Yes. Files I-539, 8 CFR 214.1(c)(1) and (2).”

14. On page 41340, in the tenth row and third column of Table 2, correct a typographical error to delete the second “Files”, to read: “Yes. Files Form I-539.”

15. On page 41340, in the eleventh row and third column of Table 2, correct a typographical error to delete the second “Files”, to read: “Yes. Files Form I-539.”

16. On page 41341, at the bottom of Table 2 after the “*”, correct the sentence to read: “Includes questions on Form I-129 and Form I-539 about receipt of public benefits since the nonimmigrant status was approved. Whether the alien must file a Form I-129 or a Form I-539 depends on the status the alien is applying to change or to extend. If more than one person is applying using the Form I-539, the Form I-539A, Supplemental

Information for Application to Extend/Change Status, is submitted to provide all of the requested information for each additional applicant listed.”

17. On page 41342 at the bottom of Table 3 after the “*”, correct the two sentences that follow to read: “If an alien is found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). 8 CFR 213.1, as amended in the final rule, describes the circumstances under which a public charge bond may be cancelled (Form I-356).”

18. On page 41343 at the bottom of Table 4 after the “*”, correct the two sentences that follow to read: “If an alien is found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). 8 CFR 213.1, as amended in the final rule, describes the circumstances under which a public charge bond may be cancelled (Form I-356).”

19. On page 41344 at the bottom of Table 5 after the “*”, correct the two sentences that follow to read: “If an alien is found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). 8 CFR 213.1, as amended in the final rule, describes the circumstances under which a public charge bond may be cancelled (Form I-356).”

20. On page 41345 at the bottom of Table 6 after the “*”, correct the two sentences that follow to read: “If an alien is found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). 8 CFR 213.1, as amended in the final rule, describes the circumstances under which a public charge bond may be cancelled (Form I-356).”

21. On page 41345, Table 7 Applicability of INA 212(a)(4) to Other Applicants Who Must Be Admissible, correct the fourth row to read:

W-16 Entered without inspection before 1/1/82.	Yes. INA 212(a)(4), INA 245A(b)(1)(C)(i) and (a)(4)(a). Special Rule for determination of public charge—See INA 245A(d)(2)(B)(iii). Certain aged, blind or disabled individuals as defined in 1614(a)(1) of the Social Security Act, 42 U.S.C. 1382c(a)(1), may apply for a waiver of inadmissibility due to public charge. INA 245A(d)(2)(B)(ii).	Exempt, by statute as they are not listed in INA 212(a)(4) as a category that requires a Form I-864.
W-26 Entered as nonimmigrant and overstayed visa before 1/1/82. Certain Entrants before January 1, 1982.		

22. On page 41346 at the bottom of Table 7 after the “*”, correct the two sentences that follow to read: “If an alien is found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post

a public charge bond (Form I-945). 8 CFR 213.1, as amended in the final, rule describes the circumstances under which a public charge bond may be cancelled (Form I-356).”

23. On page 41369 in the third column, correct the third sentence of the first paragraph to read: “Because of the nature of the public benefits that would be considered under this rule—which are generally means-tested and provide

cash for income maintenance, and non-cash benefits for basic living needs such as food, nutrition, housing, and healthcare—DHS believes that receipt of such benefits may render a person with limited means to provide for his or her own basic living needs, and who receives public benefits, not self-sufficient because of his or her reliance on such public benefits.”

24. On pages 41380–41381, starting in the last paragraph on p. 41380, correct the last sentence to read: “Because of the nature of the public benefits that

would be considered under this rule—which are generally means-tested and provide cash for income maintenance, and non-cash benefits for basic living needs such as food, nutrition, housing, and healthcare—DHS believes that receipt of such benefits is an important factor to consider, in the totality of the circumstances, when making a public charge determination.”

25. On page 41486, third column, correct the last full sentence so that it references “Table 7” instead of “Table 2” so that the sentence reads “Table 7

provides a more detailed summary of the final provisions and their impacts.”

26. On pages 41486–41488, correct a typographical error so that the Table title that currently reads “Table 2—Summary of Major Changes and Economic Impacts of the Final Rule” so that the Table reads “Table 7—Summary of Major Provisions and Economic Impacts of the Final Rule.”

27. On page 41487, correct the third row of the table to read:

<p>Amending 8 CFR 245. Adjustment of status to that of person admitted for lawful permanent residence.</p>	<p>To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.</p>	<p>Quantitative: Costs <ul style="list-style-type: none"> • \$25.8 million to applicants who must file Form I-944; • \$0.69 million to applicants applying to adjust status using Form I-485 with an increased time burden; • \$0.34 million to public charge bond obligors for filing Form I-945; and • \$823.50 to filers for filing Form I-356. <p>Total costs over a 10-year period will range from:</p> <ul style="list-style-type: none"> • \$352.0 million for undiscounted costs; • \$300.1 million at a 3 percent discount rate; and • \$247.2 million at a 7 percent discount rate. </p>
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28. On page 41488 in the second column, last partial sentence before the footnote reference, change the Table number so that the sentence reads: “In addition to the impacts summarized above and as required by OMB Circular A-4, Table 9 presents the prepared accounting statement showing the costs associated with this final regulation.”

29. On page 41488, DHS is correcting and renumbering “Table 8—OMB A-4 Accounting Statement” to read “Table 9—OMB A-4 Accounting Statement.”

30. On page 41493, third column, last full sentence, correct the Table number referenced in the sentence to read: “Table 10 below is a listing of all forms impacted by this rule.”

31. On pages 41494–41497, “Table 9—Summary of Forms” is being corrected to read “Table 10—Summary of Forms.”

C. Correction of Errors in the Regulatory Text

DHS is making the following corrections in the List of Subjects and Regulatory Amendments section of the August 14, 2019, final rule.

§ 212.21 [Corrected]

- 1. On page 41501—
- a. In the second column, at the end of paragraph (b)(4), remove the word “and” after the semicolon;
- b. In the second column, at the end of paragraph (b)(5)(iii), add the word “and” after the semicolon;
- c. In the second column, at the end of paragraph (b)(5)(iv), remove the period and add in its place a semicolon;

■ d. In the second and third column, correct paragraph (b)(7) to read:

“(7) Public benefits, as defined in paragraphs (b)(1) through (b)(6) of this section, do not include any public benefits received by—

(i) An alien who at the time of receipt of the public benefit, or at the time of filing or adjudication of the application for admission or adjustment of status, or application or request for extension of stay or change of status is—

(A) Enlisted in the U.S. Armed Forces under the authority of 10 U.S.C.

504(b)(1)(B) or 10 U.S.C. 504(b)(2), or

(B) Serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or

(ii) The spouse or child, as defined in section 101(b) of the Act, of an individual who at the time of receipt of the public benefit by such spouse or child, or at the time of filing or adjudication of the spouse’s or child’s application for admission or adjustment of status, or application or request for extension of stay or change of status, had been:

(A) Enlisted in the U.S. Armed Forces under the authority of 10 U.S.C.

504(b)(1)(B) or 10 U.S.C. 504(b)(2), or

(B) Serving in active duty or in the Ready Reserve component of the U.S. Armed Forces.”

■ e. In the third column, in lines 4–5 of paragraph (b)(8), add the words “paragraph (b) of” after “as defined in”;

■ f. In the third column, in lines 1–2 of paragraph (b)(9) introductory text, add the words “paragraph (b) of” after “as defined in”;

■ 2. On page 41502—

■ a. In the first column, in line 2 of paragraph (d)(1)(iii)—add the word “section” after “as defined in”;

■ b. In the first column, correct paragraph (d)(1)(iv) to read as follows:

“(iv) The alien’s other children, as defined in section 101(b)(1) of the Act, not physically residing with the alien, for whom the alien provides or is required to provide at least 50 percent of financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;”

■ c. In the second column, in line 1 of paragraph (d)(2)(vii), remove the word “individual(s)” and add in its place the word “individuals”;

■ d. In the second column, in line 1 of paragraph (d)(2)(vii), remove “such individual’s financial support or who is listed” with “each individual’s financial support, or who is listed”.

§ 212.22 [Corrected]

■ 3. On page 41502—

■ a. In the second column, at the end of the first sentence in paragraph (a), add the phrase “(such that, for instance, receipt of two benefits in one month counts as two months)” after the phrase “for more than 12 months in the aggregate within any 36-month period”.

■ 4. On page 41503—

■ a. In the second column, at the end of paragraph (b)(4)(i)(D), remove the word “whether”;

- b. In the second column, at the end of paragraph (b)(4)(ii)(A)(2), remove the semicolon and add a period in its place;
- c. In the third column, at the end of paragraph (b)(4)(ii)(F)), remove the semicolon and add a period in its place.
- 5. On page 41504—
 - a. In the first column, at the end of paragraph (b)(5)(ii)(C), remove the word “and”;
 - b. In the first column, at the end of paragraph (b)(5)(ii)(D), remove the period and add “; and” in its place;
 - c. In the first column, in line 5 of paragraph (b)(6)(i), remove the word “for” before the word “himself”;
 - d. In the first column, redesignate paragraphs (b)(7)(A)(1) through (3) as paragraphs (b)(7)(ii)(A) through (ii)(C);
 - e. In the second column, in line 6 of paragraph (c)(1)(ii), add the phrase “(such that, for instance, receipt of two benefits in one month counts as two months)” after the phrase “for more than 12 months in the aggregate within any 36-month period”.

§ 212.23 [Corrected]

- 6. On page 41505, in the second column, at the end of paragraph (a)(19)(ii), remove the period and add a semicolon in its place.

§ 213.1 [Corrected]

- 7. On page 41506—
 - a. In the first column, in line 7 of paragraph (b), add a reference “(c)(1)” after “212.22”;
 - b. In the first column, in line 14 of paragraph (c), remove the comma between the words “equivalent” and “is”;
 - c. In the first column, in the second sentence of paragraph (d), correct “364month” to read “36-month”; remove the comma after the word “months”; and correct the next to the last sentence in paragraph (d) to read: “An alien on whose behalf a public charge bond has been submitted may not receive any public benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months) after the alien’s adjustment of status to that of a lawful permanent resident, until the bond is cancelled in accordance with paragraph (g) of this section.”
- 8. On page 41507, in the first column in paragraph (h)(2)(i), “DHS will not consider any public benefits, as defined in 8 CFR 212.21(b) received by a spouse or child, as defined in section 101(b) of the Act, of an individual who, at the time of receipt of the public benefit(s) by his or her spouse or child, or at the time of filing a request to cancel the

bond by his or her spouse or child, or the cancellation determination, or the breach determination, is enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces.” is corrected to read “DHS will not consider any public benefits, as defined in 8 CFR 212.21(b) received by a spouse or child, as defined in section 101(b) of the Act, of an individual who, at the time of receipt of the public benefit(s) by his or her spouse or child, or at the time of filing a request to cancel the bond by his or her spouse or child, or the cancellation determination, or the breach determination, is enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), or of an individual serving in active duty or in the Ready Reserve component of the U.S. Armed Forces.”

- 9. On page 41507 in the third column before the heading for part 245, add an instruction 11a to read as follows:

§ 214.2 [Amended]

- 11a. In § 214.2, amend paragraph (h)(20) by removing “8 CFR 248.1(b)” and adding in its place “8 CFR 248.1(c)” at the end of the paragraph.

§ 248.1 [Corrected]

- 10. On page 41508
 - a. In the second column, in the second sentence of paragraph (a) add the phrase “or that section has been waived” after the words “section 212(a)(4) of the Act”;
 - b. In the third column, in paragraph (c)(4) revise the last sentence to read: “This provision does not apply where the nonimmigrant classification from which the alien seeks to change or to which the alien seeks to change is exempt from section 212(a)(4) of the Act, or where that section has been waived.”

Kevin K. McAleenan,

Acting Secretary of Homeland Security.

[FR Doc. 2019–21561 Filed 10–1–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 637

[Docket ID: USA–2018–HQ–0023]

RIN 0702–AB01

Military Police Investigation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD’s regulation concerning the management of the misdemeanor criminal investigation program by Department of the Army personnel. This part conveys internal Army policy and procedures, and is unnecessary.

DATES: This rule is effective on October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pearce at 703–695–8499.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available on the Department’s website.

DoD internal guidance will continue to be published in Army Regulation 190–30, “Military Police Investigation,” available at <https://armypubs.army.mil/ProductMaps/PubForm/AR.aspx>.

This rule is not significant under Executive Order (E.O.) 12866, “Regulatory Planning and Review,” therefore, E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs” does not apply.

List of Subjects in 32 CFR Part 637

Crime, Investigations, Law enforcement, Law enforcement officers, Military law, Search warrants.

PART 637—[REMOVED]

- Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 637 is removed.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–21183 Filed 10–1–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2017–0004]

RIN 0651–AD15

Changes to the Trademark Rules of Practice To Mandate Electronic Filing

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule, delay of effective date.

SUMMARY: On July 31, 2019, the United States Patent and Trademark Office published in the **Federal Register** a final rule amending the Rules of Practice in

Trademark Cases and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. That final rule had an effective date of October 5, 2019. This action changes the effective date to December 21, 2019.

DATES: The effective date of the final rule published on July 31, 2019 (84 FR 37081) is delayed from October 5, 2019 to December 21, 2019.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, TMFRNotices@uspto.gov, (571) 272-8946.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) published in the **Federal Register** (84 FR 37081, July 31, 2019) a final rule amending the Rules of Practice in Trademark Cases and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to mandate electronic filing of trademark applications and all submissions associated with trademark applications and registrations, and to require the designation of an email address for receiving USPTO correspondence, with limited exceptions.

The effective date of the rule is being delayed to allow the USPTO additional time to prepare internally for implementation of the requirements associated with the mandate that applicants and registrants electronically file their trademark applications and all submissions associated with trademark applications and registrations, and that they designate an email address for receiving USPTO correspondence. This final rule would also provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the new requirements before they are effective.

Rulemaking Requirements

Administrative Procedure Act: This final rule revises the effective date of a final rule published on July 31, 2019 implementing procedures requiring the electronic filing of Trademark applications, and is a rule of agency practice and procedure, and/or interpretive rules pursuant to 5 U.S.C. 553(b)(A). See *JEM Broad. Co. v. F.C.C.*, 22 F.3d 32. (D.C. Cir. 1994) (“[T]he ‘critical feature’ of the procedural exception [in 5 U.S.C. 553(b)(A)] ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present

themselves or their viewpoints to the agency.’” (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)); see also *Bachow Commc’ns Inc. v. F.C.C.*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims). Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). See *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A)).

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the change in this final rule without prior notice and an opportunity for public comment, as such procedures would be impracticable and contrary to the public interest. Immediate implementation of the delay in effective date is in the public interest, because it would allow the USPTO additional time to prepare internally for implementation of the requirements associated with the July 31, 2019 final rule. This final rule would also provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the new requirements before they are effective. Delay of this final rule to provide prior notice and comment procedures is impracticable, because it would allow the July 31, 2019 rule to go into effect before the agency is ready to implement the new requirements. Therefore, the Director finds there is good cause to waive notice and comment procedures for this rule.

Finally, the change in this final rule may be made immediately effective, because this is not a substantive rule under 35 U.S.C. 553(d). Moreover, pursuant to 5 U.S.C. 553(d)(1), the Director finds good cause to allow this final rule to be made immediately effective because it would allow the USPTO additional time to prepare internally for implementation of the requirements associated with the July 31, 2019 final rule.

Dated: September 24, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019-21178 Filed 10-1-19; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2019-0382; FRL-10000-18-Region 1]

Air Plan Approval; Rhode Island; Prevention of Significant Deterioration; PM₁₀, PM_{2.5} and NO_x

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes the regulation of fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as “PM_{2.5}”), PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), and nitrogen oxides (NO_x) within the context of Rhode Island’s Prevention of Significant Deterioration (PSD) permitting program. The EPA is also approving other minor changes to Rhode Island’s PSD permitting program. In addition, EPA is converting several conditionally approved infrastructure SIP elements to fully approved elements for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards (NAAQS). These actions are being taken in accordance with the Clean Air Act.

DATES: This rule is effective on November 1, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2019-0382. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>

www.regulations.gov or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Branch, EPA Region 1 Regional Office, 5 Post Office Square—Suite 100, mail code 05–2, Boston, MA 02109–3912, tel. (617) 918–1657, email: dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Table of Contents

- I. Background and Purpose
- II. Final Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On July 24, 2019 (84 FR 35582), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Rhode Island. The NPRM proposed approval of revisions to Rhode Island's PSD permit program regulations and also proposed to convert from conditional approval to full approval several infrastructure SIPs. The formal SIP revision was submitted to the EPA by the Rhode Island Department of Environmental Management (RI DEM) on March 26, 2018. On February 6, 2019, RI DEM submitted to the EPA a letter clarifying its intent to only incorporate certain elements of its March 2018 submittal for inclusion into the Rhode Island SIP.

The State of Rhode Island's PSD permitting program is established in Title 250—Rhode Island Department of Environmental Management, Chapter 120—Air Resources, Subchapter 05—Air Pollution Control, Part 9—Air Pollution Control Permits (Part 9). Revisions to the PSD program were last approved into the Rhode Island SIP on October 24, 2013 (78 FR 63383). Rhode Island has authority to issue and enforce PSD permits under its SIP-approved PSD program.

The March 2018 RI DEM SIP submittal, and February 2019 clarification letter, were submitted to address PM_{2.5} and PM₁₀ in the State's PSD permitting regulations, to specifically address NO_x as a precursor to ozone formation, and to make other

minor changes to Rhode Island's PSD permitting program. This submittal also sought to satisfy the conditions of an April 20, 2016 conditional approval (81 FR 23175) for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 PM_{2.5} NAAQS infrastructure SIPs (I–SIPs). The conditions of the April 20, 2016 conditional approval related to the aspects of the PSD program pertaining to NO_x as a precursor to ozone formation and changes made to 40 CFR part 51.166 in the EPA's October 20, 2010 rulemaking (75 FR 64864) concerning emissions of PM_{2.5}.

In the EPA's April 20, 2016 conditional approval, we cite a February 18, 2016 letter in which RI DEM commits to making the necessary changes to address the deficiencies in the Rhode Island SIP. RI DEM's March 2018 SIP submittal and February 2019 clarification letter satisfy the State's earlier commitment.

The NPRM includes the rationale for our full approval and the EPA will not restate its rationale in this action. No public comments were received on the NPRM.

II. Final Action

The EPA is approving several revisions to Rhode Island's PSD SIP and converting several previously conditionally approved I–SIPs to full approval.

Since the EPA's last approval on October 24, 2013 of amendments to RI DEM's Part 9, the State has undertaken a new codification system that results in different citations between the current state regulations and the Rhode Island SIP. Due to the State's new codification system, there are instances where the state regulation being approved into the SIP at this time does not mesh precisely within the existing codification structure of the Rhode Island SIP. As a matter of substantive legal requirements, however, the regulations approved into the Rhode Island SIP, including those we are approving today, are harmonious and clear.

We describe below exactly how each definition and provision within Part 9 that we are approving will be incorporated into Rhode Island's SIP. A discussion of how the amendments to the SIP align with existing provisions in EPA's PSD regulations at 40 CFR part 51.166 is contained in the NPRM and will not be repeated here. The EPA is approving the following specific revisions into the Rhode Island SIP.

1. The definition of “Baseline concentration” in Section 9.5.C.2., replaces Section 9.5.l(b) in the currently approved Rhode Island SIP.

2. The definition of “Increment” in Section 9.5.C.3., replaces Section 9.5.1(d) in the currently approved Rhode Island SIP.

3. The definition of “Major Source Baseline Date” in Section 9.5.C.4., replaces Section 9.5.l(e) in the currently approved Rhode Island SIP.

4. The definition of “Major Stationary Source” in Section 9.5.C.6., replaces Section 9.5.l(g) in the currently approved Rhode Island SIP.

5. The definition of “Minor Source Baseline Date” in Section 9.5.C.5., replaces Section 9.5.l(f) in the currently approved Rhode Island SIP.

6. The definition of “Regulated NSR Pollutant” in Section 9.5.A.36., replaces Section 9.1.36 in the currently approved Rhode Island SIP.

7. The definition “Subject to Regulation” in Section 9.5.A.41., replaces Section 9.1.41 in the currently approved Rhode Island SIP.

8. The regulation regarding the amount of available increment a source can consume in Section 9.9.2 replaces Section 9.5.3.(a) in the currently approved Rhode Island SIP.

Although the State's amendment removes the limits on the amount of available increment that can be consumed, the amendment does not allow a source to consume more increment than is available. See Subchapter 05, Part 9, Section 9.9.1.A.2.a(2) of Rhode Island's Air Resources Regulations.

9. Section 9.9.2.A.5.e(3), which prohibits emissions from temporary sources of sulfur dioxide, nitrogen oxides, and particulate matter from being excluded from increment consumption if the temporary emissions would impact a Class I area, replaces Section 9.5.3(c)(5)c in the currently approved Rhode Island SIP.

10. The table in Section 9.9.4.A. that contains PM_{2.5} thresholds which, if exceeded, would require a new major stationary source or a source making a major modification to comply with nonattainment new source review requirements, replaces the table at Section 5.5 in the currently approved Rhode Island SIP.

With these changes to Rhode Island's PSD regulations, the EPA has found that Rhode Island's infrastructure SIPs for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 PM_{2.5} NAAQS fully meet the PSD program requirements.

III. 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 RI DEM's regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

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 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 regulatory action because this action is not significant 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 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 December 2, 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 19, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of 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 OO—Rhode Island

- 2. Section 52.2070 is amended:
 - a. In the table in paragraph (c) by revising the entry for "Air Pollution Control Regulation 9"; and
 - b. In the table in paragraph (e) by revising the entries for "Infrastructure SIP for the 2008 Ozone NAAQS", "Infrastructure SIP for the 2008 lead NAAQS", "Infrastructure SIP for the 2010 NO₂ NAAQS", "Infrastructure SIP for the 1997 PM_{2.5} NAAQS", and "Infrastructure SIP for the 2006 PM_{2.5} NAAQS".

The revision reads as follow:

§ 52.2070 Identification of plan.

* * * * *
(c) * * *

¹ 62 FR 27968 (May 22, 1997).

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
* Air Pollution Control Part 9.	* Air pollution control permits.	* 4/5/2018	* 10/2/2019 [Insert Federal Register citation].	* Amend definitions in Section 9.5: "Baseline concentration"; "Increment"; "Major Source Baseline Date"; "Major Stationary Source"; "Minor Source Baseline Date"; "Regulated NSR Pollutant"; "Subject to Regulation" Replace Section 9.5.3(a) with new language codified as Section 9.9.2. Replace Section 9.5.3(c)(5)c with new language codified as Section 9.9.2.A.5.e(3). Replace the table at Section 5.5 with a new table codified as Section 9.9.4.A.
*	*	*	*	*

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
* Infrastructure SIP for the 2008 ozone NAAQS.	* Statewide	* Submitted 01/02/2013 and 3/26/2018	* 4/20/2016, 81 FR 23178.	* Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. 10/2/2019 [Insert FEDERAL REGISTER citation]. Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.
* Infrastructure SIP for the 2008 lead NAAQS.	* Statewide	* Submitted 10/26/2011 and 3/26/2018	* 4/20/2016, 81 FR 23178.	* Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. 10/2/2019 [Insert FEDERAL REGISTER citation]. Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.
* Infrastructure SIP for the 2010 NO ₂ NAAQS.	* Statewide	* Submitted 1/2/2013 and 3/26/2018	* 4/20/2016, 81 FR 23178.	* Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. 10/2/2019 FEDERAL REGISTER citation]. Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.
* Infrastructure SIP for the 1997 PM _{2.5} NAAQS.	* Statewide	* Submitted 9/10/2008 and 3/26/2018	* 4/20/2016, 81 FR 23178.	* Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. 10/2/2019 [Insert FEDERAL REGISTER citation]. Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.
* Infrastructure SIP for the 2006 PM _{2.5} NAAQS.	* Statewide	* Submitted 11/6/2009 and 3/26/2018	* 4/20/2016, 81 FR 23178.	* Conditional approval for certain aspects related to PSD in 2016 is fully approved in 2019. 10/2/2019 [Insert FEDERAL REGISTER citation]. Infrastructure SIP approved except for element (H) which was disapproved. See 52.2077.
*	*	*	*	*

§ 52.2077 [Amended]

■ 3. Section 52.2077 is amended by removing and reserving paragraph (a).

[FR Doc. 2019-20870 Filed 10-1-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R08-OAR-2017-0469; FRL-10000-04-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to the Utah Division of Administrative Rules, R307-300 Series; Area Source Rule for Attainment of Fine Particulate Matter Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of rule revisions submitted by the State of Utah on May 9, 2013, and August 25, 2017, to Utah's R307-309 fugitive dust control rule. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

DATES: This final rule is effective on November 1, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2017-0469. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other 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 <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6602, ostigaard.crystal@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 14, 2017 (82 FR 43205), the EPA proposed to approve revisions to Utah administrative rule R307-309 (fugitive dust control rule) submitted on May 9, 2013, and August 25, 2017, and proposed to approve Utah's December 16, 2014 submittal determining that R307-309 provides for the implementation of reasonably available

control measure (RACM) in Utah's fine particulate matter (PM_{2.5}) Moderate area state implementation plan (SIP). Before finalizing this action, however, the EPA determined that the Salt Lake City (signed on September 16, 2019), Provo (84 FR 14267), and Logan (83 FR 52983) PM_{2.5} nonattainment areas attained the PM_{2.5} NAAQS. These clean data determinations suspend Utah's obligation to submit certain nonattainment area planning requirements, including RACM; thus, we are not finalizing action on Utah's December 16, 2014 submittal at this time. Nonetheless, the rule revisions to R307-309 submitted on May 9, 2013, and August 25, 2017, are approved into the SIP on the basis that R307-309, "Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust," strengthens the existing Utah SIP.

II. Response to Comments

Our September 14, 2017 (82 FR 43205), proposed rulemaking provided a 30-day public comment period. The EPA received a total of three public comments on the proposed action. The first comment was anonymous, the second comment was from a named individual, and the third comment was from Western Resource Advocates. Our Response to Comments document in the docket for this action contains a summary of the comments and the EPA's responses. The full text of the public comments, as well as all other documents relevant to this action, are available in the docket (EPA-R08-OAR-2017-0469).

III. Final Action

No comments were submitted that changed our assessment that the submitted rule revisions comply with the relevant CAA requirements. For the reasons stated in our proposed rule, final rule, and the Response to Comments document (EPA-R08-OAR-2017-0469), the EPA is finalizing approval of the revisions submitted by Utah on May 9, 2013, and August 25, 2017, pursuant to section 110 of the CAA, as the rule revisions will strengthen the Utah SIP by providing additional PM reductions. The EPA is not taking final action on Utah's December 16, 2014 submission that R307-309 constitutes RACM at this time.

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 Utah Division of Administrative Rules described in the amendments set forth to 40 CFR part 52 below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the 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 the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

Under the 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

¹ 62 FR 27968 (May 22, 1997).

affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the 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 December 2, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organization compounds.

Dated: September 20, 2019.

Gregory Sopkin,
Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart TT—Utah

- 2. In § 52.2320(c), the table is amended by adding the centered heading “R307–309. Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust” and entry “R307–309” in numerical order to read as follows:

§ 52.2320 Identification of plan.
* * * * *
(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
* * * * *				
R307–309. Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust				
R307–309	Nonattainment and Maintenance Areas for PM ₁₀ and PM _{2.5} : Fugitive Emissions and Fugitive Dust.	8/4/2017	[Insert Federal Register citation], 10/2/2019.	
* * * * *				

* * * * *
[FR Doc. 2019–20932 Filed 10–1–19; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 180
[EPA–HQ–OPP–2018–0763; FRL–9999–81]
Sodium Lauryl Sulfate; 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 the fungicide and miticide sodium lauryl sulfate in or on all food commodities when used in accordance with label directions and good agricultural practices. Central Coast Garden Products submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium lauryl sulfate under FFDCA.

DATES: This regulation is effective October 2, 2019. Objections and requests for hearings must be received on or before December 2, 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-2018-0763, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: BPDPFRNotices@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](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0763 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 December 2, 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-2018-0763, 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. Background

In the **Federal Register** of March 18, 2019 (84 FR 9737) (FRL-9989-71), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 8F8688) by Central Coast Garden Products, 1354 Dayton St., Unit N, Salinas, CA 93901.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of Sodium Lauryl Sulfate (SLS) (CAS No. 151-21-3) in or on all raw agricultural commodities. That document referenced a summary of the petition prepared by the petitioner, Central Coast Garden Products, which is available in the docket via <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

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 exemption is "safe." Section 408(c)(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. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C) and (D), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption, 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" Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider "available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity."

EPA evaluated the available toxicity and exposure data on sodium lauryl sulfate and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Sodium lauryl sulfate (also called sodium dodecyl sulfate) is an amphiphilic anionic surfactant that is widely used in cleaning products,

cosmetics, personal care products, foods, pesticide products, lubricants and paints.

As a pesticide, the chemical is exempt from the requirements of Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as a minimum risk active ingredient under the specifications in 40 CFR 152.25(f). As an inert ingredient in pesticide products, SLS is approved for nonfood and food uses without limitation as a surfactant for pre- and post-harvest uses (40 CFR 180.910) and as a surfactant applied to animals (40 CFR 180.930). For antimicrobial pesticide products, SLS is approved for use in food-contact sanitizing solutions with an end-use concentration limit of 350 ppm (40 CFR 180.940(a), (b), and (c)). Currently, there is one federally-registered product where SLS is an active ingredient, an antiviral tissue, which was registered in 2009.

The Food and Drug Administration (FDA) has approved its use as a direct and indirect food additive (with limitations) under 21 CFR 172.210, 172.822, 175.105, 175.300, 175.320, 176.170, 176.180, 176.210, 177.1200, 177.1210, 177.1630, 177.2600, 177.2800, 178.1010 and 179.45. These uses include emulsifier, whipping aid, coating and wetting agent. The chemical is also considered to be a Generally Recognized as Safe (GRAS) substance (21 CFR 172.822 (with limitations); Flavor and Extract Manufacturers Association (FEMA) # 4437).

Overall, SLS is considered to be of low toxicity. Based on the available information and the fact that humans have been exposed to SLS for decades in food and nonfood products, the chemical is considered to have a history of safe use. The target organ is the liver, but no adverse effects were seen at or below 430 milligram/kilogram/day (mg/kg/day). There is no evidence of increased susceptibility in the developmental and reproductive toxicity studies. Moreover, no neurotoxicity, genotoxicity, or carcinogenicity have been observed in the available database, which includes the following studies: Acute toxicity, repeat dose (gavage and dietary) toxicity, developmental toxicity, reproductive toxicity, genotoxicity and carcinogenicity.

With regard to potential dietary exposure to SLS, the Agency expects that upon approval of this exemption, SLS may be used in any number of pesticide products, as it is listed as an active ingredient that can be used in minimum risk pesticide products without regulation under FIFRA (except as directed in 40 CFR 152.25(f)). Moreover, as noted above, SLS has been

found safe for use as an inert ingredient in pesticide products and has been approved by FDA for use as a food additive. The Agency anticipates contributions to dietary exposures (food and drinking water) to be negligible due to the physical and chemical properties of SLS, which degrades rapidly in the environment and is highly soluble in water. Furthermore, any minimal residues that might be consumed are expected to be readily metabolized.

Due to the low toxicity of SLS, long history of safe use, and expected minimal dietary exposure, the Agency did not identify any points of departure for a quantitative assessment of SLS.

As part of its risk assessment for SLS, the Agency has further considered the potential risks of residential exposures, aggregate exposures, and cumulative risk. Based on SLS's low toxicity, anticipated negligible dietary exposure and history of safe use in consumer products, no risks of concern have been identified relative to residential (non-occupational) pesticidal uses or any aggregate of exposures to products containing SLS. Similarly, no risks of concern were identified for cumulative exposures to SLS since no common mechanism of toxicity was identified for either SLS or its metabolites.

Therefore, based on the lack of toxicity and expected low exposures, EPA has determined that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to SLS. The data upon which EPA relied to make its safety determination, as well as other relevant information, including the Agency's dietary risk assessment, is available in the docket for this action as described under **ADDRESSES**.

Based on its safety determination, EPA is establishing an exemption from the requirement of a tolerance for residues of the fungicide and miticide sodium lauryl sulfate in or on all food commodities when used on accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes due to lack of concern for exposures, which supports the establishment of an exemption for residues of sodium lauryl sulfate.

IV. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to EPA. 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 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 exemption in this action, 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. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA 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, EPA 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 EPA's 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).

V. 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: September 17, 2019.

Richard Keigwin,

Director, 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. Add § 180.1372 to subpart D to read as follows:

§ 180.1372 Sodium lauryl sulfate; exemption from the requirement of a tolerance.

Residues of the fungicide and miticide sodium lauryl sulfate (CAS No. 151-21-3) in or on all food commodities are exempt from the requirement of a tolerance, when used in accordance with label directions and good agricultural practices.

[FR Doc. 2019-21121 Filed 10-1-19; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 190926-0046]

RIN 0648-BH25

Subsistence Taking of Northern Fur Seals on the Pribilof Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is modifying the subsistence use regulations for the Eastern Pacific stock of northern fur seals (*Callorhinus ursinus*) in response to a petition from the Aleut Community of St. Paul Island, Tribal Government (ACSPI). This rule simplifies the regulations and authorizes Pribilovians who reside on St. Paul Island, Alaska, to kill for subsistence uses each year up to 2,000 male fur seals less than seven years old (defined as juvenile males), including young of the year (also called pups). This rule authorizes up to 20 mortalities of female fur seals per year (and any female mortality will be included in the 2,000 fur seals authorized for subsistence use per year). This rule allows the taking of fur seals on St. Paul Island over two subsistence use seasons annually: One season from January 1 through May 31 using firearms to hunt, and the second season from June 23 through December 31 without using firearms for the harvest. In addition, the rule authorizes Pribilovians who reside on St. George Island, Alaska, to kill each year up to 500 male fur seals during harvests for subsistence use, including authorization of up to three female mortalities each year (and any female mortality will be included in the 500 fur seals authorized for subsistence use per year). Finally, the rule streamlines and simplifies the regulations by eliminating several duplicative and unnecessary regulations governing Pribilovians on St. Paul and St. George Islands.

DATES: Effective on September 27, 2019.

ADDRESSES: A 2005 Final Environmental Impact Statement for Setting Annual Subsistence Harvest of Northern Fur Seals on the Pribilof Islands (EIS), 2014 Final Supplemental EIS (SEIS) for Management of Subsistence Harvest of Northern Fur Seals on St. George Island, the 2019 Supplementary Information Report to the 2014 Final SEIS for Management of Subsistence Harvest of Northern Fur Seals on St. George Island, and 2019 Final SEIS for Management of Subsistence Harvest of Northern Fur Seals on St. Paul Island are available on the internet at the following address under the NEPA Analyses tab <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports>.

Electronic copies of the Regulatory Impact Review (RIR) prepared for this action are available at <https://www.fisheries.noaa.gov/alaska/marine->

[mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports](https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports).

A list of all the references cited in this final rule may be found on <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS at the above **ADDRESSES** and by email to OIRA_Submission@omb.eop.gov, or fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Michael Williams, NMFS Alaska Region, 907-271-5117, michael.williams@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule on August 14, 2018 (83 FR 40192) to modify the subsistence harvest regulations for northern fur seals on the Pribilof Islands based on the petition from the ACSPI (77 FR 41168; July 12, 2012). The rule streamlines and simplifies the regulations by eliminating several duplicative and unnecessary regulations governing Pribilovians on St. Paul and St. George Islands (Islands). The rule simplifies the regulations and authorizes Pribilovians who reside on St. Paul Island to kill for subsistence uses each year up to 2,000 male fur seals less than 7 years old, including pups during two seasons. The rule defines the first season from January 1 through May 31 and authorizes the use firearms to take juvenile fur seals during this first season. The rule defines the second season from June 23 through December 31 and authorizes the harvest of juvenile fur seals without the use of firearms. This rule authorizes up to 20 mortalities of female fur seals per year (of the 2,000 fur seals authorized for subsistence use per year) on St. Paul Island. In addition, the rule simplifies the regulations and authorizes Pribilovians who reside on St. George Island to kill up to 500 male fur seals during harvests for subsistence use, including authorization of up to three female mortalities each year. These annual levels of authorized subsistence use of fur seals are consistent with levels that NMFS has authorized under previous regulations since the early 1990s, as discussed further below. Finally, the rule streamlines and simplifies the regulations by eliminating several duplicative and unnecessary provisions

governing Pribilovians on St. Paul and St. George Islands.

St. Paul Island and St. George Island are remote islands located in the Bering Sea populated by Alaska Native residents who rely upon marine mammals as a major food source and cornerstone of their culture. The taking of North Pacific fur seals (northern fur seals) is prohibited by the Fur Seal Act (FSA, 16 U.S.C. 1151–1175) unless expressly authorized by the Secretary of Commerce through regulation. Pursuant to the FSA, it is unlawful, except as provided in the FSA or by regulation of the Secretary of Commerce, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States (16 U.S.C. 1152). Section 105(a) of the FSA authorizes the promulgation of regulations with respect to the taking of fur seals on the Pribilof Islands as the Secretary of Commerce deems necessary and appropriate for the conservation, management, and protection of the fur seal population (16 U.S.C. 1155(a)). Existing regulations issued under the FSA authorize Pribilovians to take fur seals on the Pribilof Islands if such taking is for subsistence uses and not accomplished in a wasteful manner (50 CFR 216.71).

For both Islands, the number of fur seals authorized to be harvested annually was established every year from 1985–1994. The regulations were revised on July 12, 1994 (59 FR 35471) to authorize an annual harvest range to last for three-year periods, in accordance with 50 CFR 216.72(b), based on an estimate of the number of fur seals expected to satisfy the Pribilovians' subsistence requirements. The history of regulatory revisions can be found in the 2019 SEIS (NMFS 2019) for the management of the subsistence harvest of northern fur seals on St. Paul Island, Alaska (the 2019 St. Paul SEIS), and in the 2014 SEIS for management of subsistence harvest of northern fur seals on St. George Island, Alaska (the 2014 St. George SEIS) (see **ADDRESSES**).

Northern fur seals were killed for their skins for at least 200 years during commercial operations on the Pribilof Islands (Scheffer *et al.*, 1984, and NMFS 2007). Northern fur seal population trends are most closely related to the number of females because a single territorial adult male inseminates multiple reproductive females. Thus, the number of males in the population is much less important to the stability of the population. This understanding of population dynamics provided the basis

for the commercial harvest levels established under the FSA (Scheffer *et al.*, 1984). Gentry (1998) and NMFS (2007) summarized the extensive research on the direct and indirect effects of the commercial harvest on fur seal behavior and the population. NMFS has examined the abundance and trend of the population compared to the number of sub-adult male fur seals killed and the number of fur seals likely harassed during the historical commercial harvest and later subsistence harvests. The harvest management and intensity of harvest changed drastically during the transition from commercial harvest to subsistence use on the Pribilof Islands. Seals were harvested commercially five days a week during the month of July from all haulout areas. The abrupt reduction from commercial harvest levels to subsistence harvest levels in the 1980s did not result in a corresponding change in the estimates of the number of pups born on the Pribilof Islands. NMFS did not observe a statistically significant change in the estimate of pup production until after 1994 on St. Paul Island. Thus, for both St. Paul and St. George Islands, when the harvest of sub-adult males was reduced by over 90 percent, there was no change in the trend of number of pups born, regardless of whether the underlying population trend was declining (as on St. George Island from 1973–1982) or stable (as on St. Paul Island from 1985–1994).

Therefore, NMFS concluded in the 2014 St. George SEIS and the 2019 St. Paul SEIS that subsistence harvest mortality of sub-adult male fur seals has not contributed to a detectable change in the population trends since the implementation of the subsistence use regulations (51 FR 24828; July 9, 1986). NMFS assumes that some level of harassment occurs during the subsistence take of fur seals. NMFS analyzed the impact of harassment on non-harvested seals and concluded in the 2014 St. George SEIS and the 2019 St. Paul SEIS that harassment associated with subsistence take would have short-term energetic effects on those seals, but no detectable population consequences. Further, NMFS (2014, 2019), Fowler *et al.* (2009), Towell and Williams (2016), and Towell (2019) analyzed the direct mortality and harassment associated with authorizing the Pribilovians on St. Paul to take male pups and males less than 7 years old for subsistence use up to the levels authorized in this final rule. NMFS (2014), Fowler (2009), and Towell and Williams (2016) analyzed direct mortality and harassment

associated with authorizing Pribilovians on St. George to take sub-adult male and male young of the year for subsistence use up to levels authorized in the 2014 final rule (79 FR 65327; November 14, 2014). Towell (2019) modeled the population composition after 25 years of annual mortality of up to 2,000 six year old males on St. Paul Island compared to similar mortality of up to 2,000 male pups prior to weaning. Based on our understanding of fur seal ecology and modeling the response of the population to subsistence mortality of pups, these analyses conclude that the mortality of male pups results in fewer population consequences than a similar harvest of males older than two years because pups have a high level of natural mortality after weaning.

NMFS, therefore, does not expect a detectable change in population trends from future subsistence harvests authorized under this rule of up to 500 sub-adult male fur seals 124.5 cm or less in length (*i.e.*, sub-adult) annually on St. George (of which up to three may be female fur seals and of which up to 150 may be male young of the year seals authorized for harvest in 50 CFR 216.72(d)(6)–(d)(10)). This continues the currently authorized methods and level of subsistence use on St. George Island. NMFS also does not expect a detectable change in population trends from future subsistence use authorized under this rule of up to 2,000 juvenile fur seals annually on St. Paul (of which any number may be pups, but of the 2,000 authorized for subsistence use only up to 20 may be female fur seals). This continues the currently authorized level of subsistence use on St. Paul Island, but with methods and seasons modified by this final rule, as explained further below.

For St. George Island, the regulations will continue to use the term “sub-adult” to refer to those fur seals authorized for subsistence use in the sub-adult season from June 23 through August 8 annually (50 CFR 216.72(d)(1)–(5)) and will continue to use the term “young of the year” to refer to those fur seals authorized for subsistence use in the male young of the year season from September 16 through November 30 annually (50 CFR 216.72(d)(6)–(10)). For St. Paul, this final rule authorizes in 50 CFR 216.72(e) take by hunt and harvest of juvenile male fur seals, and defines juvenile as non-breeding male fur seals less than seven years old (*i.e.*, including pups, which also are called young of the year).

Petition for Rulemaking To Change Management on St. Paul Island

The process to change subsistence use management of northern fur seals on St. Paul Island began on February 16, 2007, with the receipt of Tribal Resolution 2007–09 from ACSPI. In that resolution, ACSPI requested NMFS immediately start the process to impose a moratorium on the regulations at 50 CFR 216, Subpart F or revise the regulations. On May 7, 2007, NMFS determined that an immediate moratorium was not warranted and that the Marine Mammal Protection Act (MMPA) co-management process described in an agreement between NMFS and ACSPI was the best means to determine what regulatory changes were needed to allow the community to meet its subsistence needs while continuing to promote the conservation of northern fur seals on St. Paul Island consistent with the MMPA and FSA.

On October 21, 2009, ACSPI submitted resolution 2009–57 with supporting information to NMFS as a basis to modify the regulations governing the subsistence use of northern fur seals on St. Paul Island. NMFS evaluated the resolution and worked with ACSPI over the next two years to clarify details of the request and supporting documents. Based on those clarifications, NMFS determined that there was adequate information to publish a notice of receipt of petition for rulemaking and opportunity for public comment under the Administrative Procedure Act (77 FR 41168; July 12, 2012). ACSPI subsequently approved resolution 2015–04, amending resolution 2009–57, to assist NMFS to respond to comments received on the petition. NMFS then published a Notice of Intent to prepare an SEIS to evaluate alternatives to managing the subsistence use of northern fur seals on St. Paul Island (80 FR 44057; July 24, 2015), and completed a draft SEIS for public comment (82 FR 4336; January 13, 2017), as well as a proposed rule (83 FR 40192; August 14, 2018).

The 2019 St. Paul SEIS (NMFS 2019) analyzes the effects of the status quo, the petitioned alternative, preferred alternative, and other alternative subsistence use management regimes. NMFS concluded in the SEIS that the preferred alternative including subsistence use of up to 2,000 juvenile northern fur seals, of which up to 20 may be females killed during the subsistence use seasons, would have a minor effect on the population of about 424,531 fur seals residing seasonally on St. Paul Island. ACSPI petitioned NMFS to define the seals that may be taken for

subsistence uses as “juvenile” male fur seals. A “juvenile” would be defined as a seal less than seven years old, inclusive of pups. This rule does not designate pups as a separate subcategory of juveniles, and ACSPI seeks flexibility to harvest any male seals less than seven years old. ACSPI also petitioned NMFS to remove a restriction on the length of seal that may be taken for subsistence use. These changes streamline and simplify the regulations because those distinctions were unnecessary from a conservation perspective (per the analysis in the 2019 St. Paul SEIS—NMFS 2019; and the proposed rule—83 FR 40192).

ACSPI petitioned NMFS to revise the subsistence use regulations, suggesting that four regulatory provisions were necessary to improve management of the subsistence use of northern fur seals on St. Paul Island: (1) Subsistence use of up to 2,000 juvenile male fur seals annually; (2) hunting of juvenile male fur seals from January 1 to May 31 annually using firearms; (3) harvesting of juvenile male fur seals from June 23 to December 31 annually without the use of firearms; and (4) co-management of subsistence use by ACSPI and NMFS under the co-management agreement. Subsequent discussions with ACSPI clarified that their request was to revise the co-management agreement signed in 2000 and to establish in a revised agreement a process to cooperatively manage and restrict subsistence use, such as location and frequency of harvesting and hunting, without additional regulatory provisions.

NMFS entered into a co-management agreement with the ACSPI in 2000 under Section 119 of the MMPA (16 U.S.C. 1388). The co-management agreement (available at <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/co-management-marine-mammals-alaska>) established a Co-management Council with equal membership between NMFS and ACSPI to work cooperatively in the conservation and management of fur seals and Steller sea lions on St. Paul Island. The co-management agreement includes a guiding principle “that provides for full participation by the Unangan of St. Paul, through the [ACSPI], in decisions affecting the management of marine mammals used for subsistence purposes,” including the management of subsistence use of northern fur seals.

NMFS and ACSPI revised and aligned the co-management agreement for consistency with this final rule, while maintaining the guiding principles set out in the original agreement. The revised co-management agreement

recognizes shared responsibilities in the conservation and cooperative management of fur seals, as well as Steller sea lions and harbor seals, and allows the co-management process to address monitoring and reporting of the subsistence seasons and the details of management of subsistence use. Specifically, the Co-management Council will use an adaptive management framework to make non-regulatory in-season adjustments to management decisions such as the locations, timing, and methods of subsistence use, within the regulatory parameters allowed by this rule. This also includes, but is not limited to, monitoring and management of mortality of female fur seals and seals struck and lost during the hunting season. The Co-management Council will use environmental, community, and subsistence use data and information to make in-season decisions regarding how the harvest is prosecuted, ensuring adherence to the regulatory seasons and the regulatory limit on the subsistence use of up to 2,000 juvenile fur seals, of which up to 20 may be female fur seals killed during the subsistence use seasons.

Changes to Management on St. George Island

In 2006, the Traditional Council of St. George Island, Tribal Government (Traditional Council) petitioned NMFS to change the subsistence use management of northern fur seals on St. George. NMFS worked with the Traditional Council to clarify the petitioned changes and authorize the annual harvest of up to 150 male young of the year seals during a second season from September 16 through November 30 within the limits already established every three years under 50 CFR 216.72(b). The action included changes to the authorized subsistence use locations on St. George applicable to both young of the year and sub-adult harvests, as well as other regulatory provisions for conservation of fur seals.

In 2014, NMFS finalized the rule that authorized on St. George the harvest of up to 150 male young of the year seals, allowed harvests of sub-adults and young of the year seals at all areas capable of sustaining a harvest, added a harvest suspension provision if two females were killed during the year, and specified termination of the subsistence use seasons for the remainder of the year if three females were killed (79 FR 65327; November 4, 2014). NMFS changed 50 CFR 216.74 to reflect that the Traditional Council and NMFS had developed a different subsistence management relationship under Section

119 of the MMPA. At that time, NMFS did not change the process used to establish the subsistence needs of the Pribilofians on St. George, so we continued to specify in triennial notices in the **Federal Register** the lower and upper limit of the number of seals required to meet the subsistence needs on both Islands, per 50 CFR 216.72(b).

ACSPI petitioned for the removal of 50 CFR 216.72(b), which is applicable to both Islands. In this rule, NMFS removes the requirement for triennial notices for both Islands, and NMFS establishes in regulation the maximum number of seals that may be harvested on St. George Island (500), which is based on the upper limit established by NMFS (82 FR 39044; August 17, 2017) and agreed to by the Traditional Council since 1990 (55 FR 30919; July 30, 1990). NMFS also removes duplicative and unnecessary regulations applicable to subsistence use on St. George based on the determination that the statutory take prohibition in the FSA does not also require regulatory prohibitions.

Population and Demographics

NMFS currently manages the northern fur seal population as two stocks in the U.S.: The Eastern Pacific and the San Miguel stocks. The Eastern Pacific stock includes northern fur seals breeding on St. Paul, St. George, and Bogoslof islands and Sea Lion Rock, AK. NMFS designated the Pribilof Islands northern fur seal population as depleted under the MMPA on May 18, 1988 (53 FR 17888). Loughlin *et al.* (1994) estimated approximately 1.3 million northern fur seals existed worldwide in 1992, and the Pribilof Islands portion (which later was designated the Eastern Pacific stock) accounted for about 982,000 seals (74 percent of the worldwide total). In 1995, NMFS included fur seals breeding on Bogoslof Island in the estimate of 1,019,192 northern fur seals for the Eastern Pacific stock (Small and DeMaster 1995). The most recent estimate for the number of fur seals in the Eastern Pacific stock, based on pup production estimates from Sea Lion Rock (2014), on St. Paul and St. George (mean of 2012, 2014, and 2016), and on Bogoslof Island (mean of 2011 and 2015), is 620,660 (Muto *et al.* 2019). The annual pup production trends for the breeding islands in the Eastern Pacific stock from 1998 to 2016 vary between islands. Between 1998 and 2016, the St. Paul pup production declined 4.12 percent per year (SE = 0.49%; P < 0.01); the most recent biennial pup production estimate in 2018 shows continued decline of pup production on St. Paul and an increase on St. George (Towell *et al.* 2019). There is no new estimate for

Bogoslof Island. The ongoing decline in pup production at St. Paul is the determining factor for the overall declining stock estimate (Muto *et al.* 2019). The causes of the different trends among breeding areas are unknown.

Northern fur seals seasonally occupy specific breeding and non-breeding sites. The age and breeding status of the seals are the main determinants of where they are found on land during the breeding and non-breeding season. Non-breeding males occupy resting sites commonly called hauling grounds or haulout areas during the breeding season and are excluded from the breeding sites (*i.e.*, rookeries) by adult males. Adult males defend territories on the breeding sites occupied by females and pups through August. Beginning about September 1, non-breeding males of all sizes can be found inter-mixed with breeding aged females and nursing pups on both rookeries and haulout areas. The harvests (both commercial and subsistence) of non-breeding males occurs on these separate hauling grounds. All of the seals begin to come in similar areas in September after adult male fur seals stop defending habitat. The terrestrial cycles of fur seals are described in detail in the SEIS (NMFS 2019) and the proposed rule (83 FR 40192, August 14, 2018).

Mixed ages and both sexes of fur seals occupy this larger area that includes the rookery and haulout areas until December. Thus from approximately September through December all fur seals generally occupy similar terrestrial habitat, and there is little if any predictable separation among males and females as is found earlier in the year.

Pups begin to occupy separate terrestrial areas from non-pups in September, and make daily transits among the two terrestrial habitat areas, while spending progressively more time in the water prior to weaning (Baker and Donahue 2000). They return daily to their nursing sites, and if their mothers have not returned from a foraging trip the pups rest or move to the exclusive pup sites. Both areas have been successfully harvested on St. George Island since the subsistence use of pups was authorized in 2014 (79 FR 65327, November 4, 2014).

Male fur seals are sexually mature and begin to show secondary sexual characteristics (*e.g.*, growth of mane, prominent sagittal crest, extreme growth of shoulders and neck) at about seven years old (Gentry 1998). These distinguishing characteristics are the basis for hunters to target males less than seven years old.

Female fur seals can be distinguished from male fur seals based on size,

canine tooth size, and whisker color. Male fur seals are larger at all ages, beginning at birth. Males grow faster and larger than females. As male and female fur seals age, their whiskers change color from all black (pup) to mixed black and white (two to seven years old) to all white (older than seven). This whisker color distinction is important because a four-year-old male is similar in size to a six-year-old or older female, but the female's whiskers will be all white and the male's whiskers will be mixed black and white. The size difference between males and females from birth to two years old is difficult to visually distinguish from a distance. Upon close inspection, the lower canine teeth of females are relatively narrower than a male's lower canine teeth. There are also some differences in fur coloration, head shape, and behavior between two- to four-year old males and females, but these characteristics are highly variable and prone to misclassification when considered alone. Thus, even though the Pribilofians target male fur seals exclusively, the final rule authorizes the mortality of up to 20 females annually on St. Paul and up to three females annually on St. George to account for misidentification of females for males. Towell (2019) modeled the effects of 20 female mortalities on St. Paul per year, and Towell and Williams (2016) modeled the effects of three female mortalities on St. George per year. NMFS (2014, 2019) summarized the results of these and other analyses to reveal no population level consequences were expected to occur.

Deregulation of Aspects of the Subsistence Use of Northern Fur Seals

NMFS will continue to regulate the subsistence taking of fur seals on the Pribilof Islands by sex, age, and season, as contemplated in the emergency final rule that NMFS promulgated after the cessation of the commercial harvest of northern fur seals in 1984 (51 FR 24828; July 9, 1986).

Removal of Duplicative Regulatory Provisions Governing Subsistence Use on St. Paul and St. George Islands

Section 102 of the FSA broadly prohibits the "taking" of northern fur seals (16 U.S.C. 1152). The current regulations governing subsistence harvest for St. Paul and St. George Islands include specific prohibitions on the take of certain age classes of fur seals and the intentional take of female fur seals (50 CFR 216.72(d)(5), (d)(9), (e)(4)). NMFS has determined that these specific regulatory provisions prohibiting take were duplicative of the

more general statutory prohibition on “taking” in Section 102 of the FSA, and thus this rule removes these sections from 50 CFR 216.72:

(d)(5) Any taking of adult fur seals or young of the year, or the intentional taking of sub-adult female fur seals is prohibited;

(d)(9) Any harvest of sub-adult or adult fur seals or intentional harvest of young of the year female fur seals is prohibited; and

(e)(4) Any taking of adult fur seals or pups, or the intentional taking of sub-adult female fur seals is prohibited.

The removal of these duplicative regulatory restrictions will not result in any changes to subsistence use of northern fur seals on St. George Island or St. Paul Island.

NMFS determined that the following provisions for St. Paul and St. George Islands are duplicative of the regulations (50 CFR 216.41) promulgated for permitting scientific research under the MMPA (16 U.S.C. 1361–1407) and authorizing stranding response under Section 403 of the MMPA (16 U.S.C. 1421b), and thus these sections are removed from 50 CFR 216.72:

(d)(3) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists, and

(e)(6) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

NMFS removes these provisions in this final rule, and will continue to rely on the more recent regulatory processes established under the MMPA to authorize taking associated with response to fur seals entangled in marine debris or previously tagged for scientific research. The removal of these duplicative regulatory restrictions will not result in any changes to the process to receive authorization for take associated with response to fur seals entangled in marine debris or previously tagged for scientific research.

Removal of Unnecessary Regulatory Provisions Governing Subsistence Use on St. Paul and St. George Islands

This final rule specifies in regulation the maximum number of fur seals that may be killed for subsistence uses annually on each Island. Per 50 CFR 216.72(e), Pribilovians on St. Paul may take by hunt and harvest up to 2,000 juvenile (less than 7 years old, including pups) fur seals per year for subsistence uses over the course of the hunting and harvest seasons, including up to 20 female fur seals per year. Per 50 CFR 216.72(d), Pribilovians on St. George may take by harvest for subsistence uses up to 500 fur seals per year over the

course of the sub-adult male harvest and the young of the year harvest, including up to 3 female fur seals per year. The maximum harvest of fur seals authorized is based on the previously established upper limit of the subsistence need for each Island (82 FR 39044; August 17, 2017), which has been unchanged since 1992 for St. Paul Island (57 FR 34081; August 3, 1992) and since 1990 for St. George Island (55 FR 30919; July 30, 1990). More detailed information on the basis for setting take at the levels authorized in this final rule can be found in the proposed rule (83 FR 40192; August 14, 2018).

The final rule removes reference to a lower limit of the subsistence need and removes references to the lower limit of the harvest range for regulations governing harvest on St. George of sub-adult male fur seals (previously 50 CFR 216.72(d)(1)) and male young of the year fur seals (previously 50 CFR 216.72(d)(6)). The final rule eliminates the process to re-assess every three years the subsistence requirements of the Pribilovians residing on St. Paul and St. George Islands that was codified at 50 CFR 216.72(b). The final rule eliminates the suspension of subsistence use when the lower limit of the range of the subsistence need is reached that was codified at 50 CFR 216.72(f)(1)(iii) and 216.72(f)(3). The final rule removes the provision for the suspension of subsistence harvest on St. Paul Island or St. George Island if NMFS determines that the subsistence needs of the Pribilovians on that Island have been satisfied, which was codified at 50 CFR 216.72(f)(1)(i). The final rule removes the provision previously at 50 CFR 216.72(g)(2) that required the termination of the subsistence harvest if NMFS determines that the upper limit of the subsistence need has been reached or if NMFS determines that the subsistence needs of the Pribilovians on either Island have been satisfied.

The final rule revises the subsistence use termination provisions at 50 CFR 216.72(g) to be consistent with the new hunting and harvest seasons for St. Paul and the subsistence use limits for each Island. The provision at 50 CFR 216.72(g)(1) applies to only St. Paul Island and: (i) For hunting of juvenile male fur seals with firearms, terminates the hunting season at the end of the day on May 31 or when 2,000 fur seals have been killed, whichever comes first; (ii) for the harvest of juvenile male fur seals without firearms, terminates the harvest season at the end of the day on December 31 or when 2,000 fur seals have been killed during the year, whichever comes first; or (iii) terminates the subsistence use seasons when 20

female fur seals have been killed during the year.

In addition, 50 CFR 216.72(g)(2) applies only to St. George Island and: (i) For the sub-adult male harvest, terminates the season at the end of the day on August 8 or when 500 sub-adult male seals have been harvested, whichever comes first; (ii) for the male young of the year harvest, terminates the harvest at the end of the day on November 30 or earlier when the first of either the following occurs: 150 male young of the year fur seals have been harvested or a total of 500 sub-adult male fur seals and male young of the year fur seals have been harvested during the year; or (iii) terminates the subsistence harvest seasons when 3 female fur seals have been killed during the year.

For St. Paul Island, the final rule removes the regulatory provision at 50 CFR 216.72(e)(5) that specified the taking of only fur seals 124.5 cm or less in length. The final rule amends 50 CFR 216.72(e) to authorize take by hunting and harvesting of juvenile seals (defined as seals under 7 years old) (1) annually from January 1 through May 31 with firearms; and (2) annually from June 23 through December 31 without the use of firearms. The final rule authorizes up to 20 female fur seals to be killed during subsistence activities per year. More detailed information on the age classes authorized for subsistence use, the hunting and harvest seasons, and female mortality for St. Paul Island can be found in the proposed rule (83 FR 40192; August 14, 2018).

Co-Management Provisions

ACSPI's petition did not include regulations authorizing the incidental take of female fur seals. NMFS evaluated ACSPI's petition for rulemaking along with other alternatives in the SEIS (NMFS 2019) and determined that the “taking” of fur seals, including incidental taking of females, must be authorized by regulation (16 U.S.C. 1152, 1155(a)). As noted previously, the final rule authorizes for St. Paul Island mortality of up to 20 female fur seals each year.

ACSPI petitioned NMFS to include a regulatory provision that would allow ACSPI to co-manage subsistence use of northern fur seals under a co-management agreement. The final rule does not include this regulatory provision because co-management of subsistence use is authorized under Section 119 of the MMPA (16 U.S.C. 1388) and no implementing regulations under the FSA are necessary to allow for co-management between NMFS and ACSPI. ACSPI and NMFS will continue

their co-management partnership under the MMPA.

NMFS and ACSPI have revised and aligned the Co-management Agreement to reflect the new regulatory framework governing the subsistence take of fur seals on St. Paul Island. NMFS and ACSPI will also develop and finalize in-season monitoring and management plan(s), which would specify details of monitoring, reporting, and hunting and harvest management that the Co-management Council would implement via consensus within the parameters of the regulations. This approach will strengthen co-management consistent with Section 119 of the MMPA (16 U.S.C. 1388), insofar as ACSPI would be an equal partner with NMFS in determining the details of how the subsistence use seasons are managed under the regulations. ACSPI would monitor the juvenile male hunting and harvest seasons with independent monitoring by NMFS representatives, while ensuring compliance with regulatory requirements and any restrictions or limitations identified in the in-season monitoring and management plan(s). NMFS and ACSPI would monitor the subsistence use of pups consistent with the intent of the revised Co-management Agreement, while also ensuring compliance with regulatory requirements and any restrictions or limitations identified in the in-season monitoring and management plan(s).

The final rule removes the heading "St. George Island" from section 50 CFR 216.74(a). The final rule at 50 CFR 216.74 describes the co-management process and the respective roles of NMFS and the tribes, clarifying its applicability to both St. George and St. Paul. The final rule removes 50 CFR 216.74(b), thus, section 216.74 no longer has subsections.

The final rule replaces all the regulatory restrictions at 50 CFR 216.72(e) to establish a new regulatory framework for St. Paul Island that is largely consistent with the petition from ACSPI. This includes removing regulatory restrictions on the location and scheduling of harvests, the requirement that only experienced sealers are authorized to harvest seals, and the size restriction authorizing the take of only furs seals 124.5 cm or less in length. NMFS (2019) determined that most of the details of subsistence use activities on St. Paul Island, including the location and scheduling of subsistence use, methods, and the individuals authorized to participate in the hunting and harvest seasons, would be more effectively managed by NMFS and ACSPI via the St. Paul Co-

management Council, rather than prescribed by regulation. The Co-management Council can consider the availability of subsistence users to participate at different times, while ensuring that Pribilovians can preserve their cultural practices and environmental stewardship of fur seals in partnership with NMFS under the regulatory limits in the final rule. More detailed information on the basis for removing these regulatory requirements at 50 CFR 216.72(e) can be found in the proposed rule (83 FR 40192; August 14, 2018).

Comments and Responses

NMFS received comments on the proposed rule (83 FR 40192; August 14, 2018) from ACSPI, the Humane Society of the United States and Humane Society Legislative Fund, the Marine Mammal Commission (Commission), and three individuals. A summary of the comments received and NMFS's responses follows.

Comment 1: Two commenters reiterated their comments submitted on the draft SEIS. The major issues or statements of concern from these commenters included: Female mortality, MMPA authority, transparency of co-management, use of PBR, apparent stock sub-division, availability of referenced scientific reports, perceived increases to subsistence use, subsistence use and user monitoring, self-reporting, analysis of disturbance, wasteful take, struck and lost seals, use of firearms to hunt, inconsistent use of the term "negligible," edible portion of meat versus the subsistence need, more recent information on the population status, and law enforcement.

Response 1: NMFS is authorizing 20 female mortalities, and population modeling (Towell 2019) suggests this annual level of subsistence-related female mortality will not have significant consequences to the population. NMFS corrected the commenter that the MMPA was not the authority for the regulations, and was instead the authority for co-management and no implementing regulations were required to co-manage subsistence use of fur seals. NMFS disagreed with the comments related to the applicability of using of PBR to manage human-caused mortality and the implication that NMFS was proposing to sub-divide the stock. NMFS acknowledges the inadvertent mistakes in referencing the report by Towell and Williams (2016, replaces Towell and Williams 2014 or 2015) and the additional analysis applicable to St. Paul Island (Towell 2019, replaces Towell and Williams unpublished). NMFS made both

references available on the web when the proposed rule was available for public comment (<https://www.fisheries.noaa.gov/action/proposed-modification-subsistence-use-regulations-eastern-pacific-stock-northern-fur-seals>). NMFS and ACSPI are committed to independent and joint subsistence use and user monitoring under the Co-management Agreement. NMFS disagreed with the comments about self-reporting and its applicability to monitoring aspect subsistence use. NMFS disagreed with comments regarding the population consequences of disturbance. NMFS disagreed with the suggestion that there were alternatives to hunting with firearms and it would result in taking in a wasteful manner. NMFS disagreed that the references of struck and lost from other hunting examples were more applicable than those NMFS used in their analysis from Steller sea lion hunting on St. Paul Island over the past 15 years. NMFS disagreed that we used the term "negligible" incorrectly in terms of the NEPA significance criteria. NMFS disagreed with the request to analyze the edible portion of meat from different age seals in order to establish the subsistence needs of St. Paul Island. NMFS does not comment on law enforcement investigations and provided information on previous completed cases. NMFS updated the FSEIS with the current population information. Please see the responses to comments 1, 3–20, 22, 27, 32–34, 38, and 39 in the Comment Analysis Report (Appendix B) in the 2019 St. Paul final SEIS (NMFS 2019) for further details of the responses and any revisions in the final SEIS as a result of those public comments.

Comment 2: One commenter indicated that the proposed rule was based on faulty documents. The commenter indicated the 2014 FSEIS for regulatory changes to authorize the St. George subsistence harvest changes and 2017 DSEIS for the regulatory changes to authorize subsistence use changes on St. Paul and St. George Islands are the faulty documents that form the basis of the proposed rule.

Response 2: NMFS disagrees that any faulty documents form the basis of our decision making in the final rule. The FSEIS for subsistence harvest management on St. George Island (NMFS 2014), and the DSEIS for subsistence harvest management on St. Paul Island (NMFS 2017), as well as the FSEIS for subsistence harvest management on St. Paul Island (NMFS 2019), contain the required information and analysis for the development of the proposed (83 FR 40192; August 14,

2018) and this final rule. Please see the responses to comments 1, 5, 6, 7, 8, 10–19, 22, 27, 32, 33, and 38 in the Comment Analysis Report (Appendix B) in the 2019 St. Paul final SEIS (NMFS 2019).

Comment 3: One commenter suggested that deregulation of the subsistence use of northern fur seals is impermissibly risk prone.

Response 3: NMFS disagrees that the removal of certain regulatory provisions via this rulemaking is risk prone. NMFS's decision to remove regulatory provisions applicable to the subsistence use of northern fur seals is based on our determination that a number of regulatory provisions were redundant, duplicative, and/or unnecessary. Section 102 of the FSA prohibits all taking of northern fur seals (16 U.S.C. 1152) in the absence of regulations under Section 105 authorizing the taking of northern fur seals on the Pribilof Islands (16 U.S.C. 1155(a)). Thus, specific prohibitions or restrictions do not need to be codified in regulations because the final rule provides the only authorized subsistence taking of northern fur seals on the Pribilof Islands, and any other taking of northern fur seals is prohibited directly by the FSA. The final rule removes other regulatory provisions that were redundant with the regulations (50 CFR 216.41) promulgated for permitting scientific research under the MMPA (16 U.S.C. 1361–1407) and authorizing stranding response under the MMPA (16 U.S.C. 1421b). The final rule also removes regulatory provisions requiring that NMFS re-assess every three years the subsistence requirements of the Pribilovians residing on St. Paul and St. George Islands that was codified at 50 CFR 216.72(b). NMFS determined this process was unnecessary because the annual subsistence needs of the Pribilovians have remained consistent since at least the early 1990s and the corresponding limits on subsistence use can be codified in regulations rather than revisited every three years. If circumstances change, NMFS could reconsider the limits on subsistence use via subsequent rulemaking.

NMFS also notes that this final rule does not deregulate all aspects of subsistence use. This final rule establishes a regulatory limit on the total number of fur seals that may be killed on each Island each year, including a total limit on female mortality, and establishes hunting and harvest seasons on St. Paul Island. Existing regulations on the harvest seasons on St. George Island are unchanged (50 CFR 216.72(d)). Moreover, the regulations retain the

requirement that all taking of fur seals must be for subsistence uses and not accomplished in a wasteful manner (50 CFR 216.71).

Comment 4: One commenter suggested the proposed rule would increase human related mortality in contravention to the goals of the Conservation Plan for the Eastern Pacific Stock of Northern Fur Seal, *Callorhinus ursinus*, specifically the first objective listed in the Conservation Plan to identify and eliminate or mitigate the cause or causes of human related mortality of northern fur seals.

Response 4: NMFS disagrees with this comment. The level of subsistence mortality in the final rule is the same as has been authorized for many years, and multiple analyses indicate that there are no adverse population consequences as a result of subsistence mortality at the levels authorized in the final rule. The number of fur seals killed may increase relative to the number harvested in recent years, but would not exceed the level that has been authorized every year since the early 1990s.

NMFS has identified both authorized and illicit causes of mortality of northern fur seals related to subsistence use, and this rule will reduce illicit causes of fur seal mortality as discussed in the DSEIS (NMFS 2017) and FSEIS (NMFS 2019). The outcome of this rule will allow NMFS and ACSPI to identify and characterize the full range of subsistence use mortality on St. Paul Island. In addition, through the advancement of the co-management partnership with ACSPI, we will be able to eliminate or mitigate causes of mortality by making annual in-season adjustments to subsistence activities based on real-time monitoring data and regular reporting to the Co-management Council. The combined regulatory and non-regulatory approach to managing subsistence use mortality is consistent with the first objective of the Conservation Plan. Further, the Conservation Plan goal referenced by the commenter includes numerous conservation actions. Conservation Action 1.3 *Evaluate harvests and harvest practices* is intended to understand and mitigate causes of human mortality, and this final rule would strengthen implementation of that action via improved co-management. In addition this rule supports Conservation Action 2.1 *Work with the Tribal governments under co-management agreements*. We also refer the reader to response to comment 2 in the Comment Analysis Report (Appendix B) for the 2019 St. Paul final SEIS (NMFS 2019).

Comment 5: Two commenters indicated that there was not an adequate justification for the subsistence need, and that NMFS was increasing the subsistence need.

Response 5: NMFS disagrees that the Pribilovians' subsistence needs have not been adequately justified. The commenters base their rationale on the number of seals recently taken for subsistence use as an indication of the Pribilovians' subsistence needs. The Pribilovians have long maintained that the current regulatory and management regime does not allow them to meet their subsistence need (which NMFS evaluated most recently at 82 FR 39044, August 17, 2017), and NMFS concurs. As explained in the 2019 St. Paul SEIS and in the proposed rule, recent harvest levels are not indicative of current and future subsistence need for each Island. On St. Paul Island, for example, the current season is limited to only 47-days, from June 23 to August 8, which conflicts with the commercial halibut season and one of the few employment opportunities for Pribilovians on the Island. Other regulatory restrictions, such as the requirement that only experienced sealers are authorized to take fur seals, can restrict the ability of Pribilovians to harvest fur seals to meet their subsistence need (83 FR 40192, August 14, 2018; 56 FR 36735, 36739, August 1, 1991).

Moreover, NMFS determined that the existing regulatory approach to establishing the subsistence need on St. Paul and St. George Islands is no longer necessary for the several reasons, including: (1) The estimates of yield of edible meat per fur seal, which were used to approximate the number of seals thought to fulfill subsistence needs, are no longer germane factors when evaluating the subsistence needs of Pribilovians; (2) the use of the lower and upper limit of the subsistence requirement has not provided the expected flexibility to the Pribilovians to meet their annual subsistence needs and has proven to be an unnecessary restriction; (3) estimating the subsistence need based on nutritional, socio-economic, and cultural factors results in a more realistic assessment of subsistence need than the exclusive use of nutritional factors; and (4) given the consistency of the determination of Pribilovians' subsistence needs for more than 25 years, codifying the maximum subsistence use levels in regulation would be much more efficient than continuing to revisit the subsistence need every three years.

Regarding this final basis, while the final rule could result in increased numbers of seals killed for subsistence

uses, the total mortality authorized in regulation would be no greater than has been authorized continuously for over two decades (St. Paul: 57 FR 34081; August 3, 1992 & St. George: 55 FR 30919; July 30, 1990). Moreover, total mortality authorized in regulation by this final rule would have no adverse population-level consequences.

Comment 6: Three commenters expressed concerns about monitoring, two suggesting the proposed rule would result in a reduction in Federal monitoring and the need for regulatory requirements for monitoring the subsistence use of northern fur seals on St. Paul Island. The other commenter suggested there was a need for continued monitoring of the population and subsistence.

Response 6: NMFS disagrees that the new regulations will result in a reduction in Federal monitoring of subsistence use of northern fur seals. NMFS will continue to independently monitor subsistence use of northern fur seals on St. Paul to ensure compliance with the regulations and to inform the decisions of the St. Paul Co-management Council. Local subsistence use monitoring will also be implemented by ACSPI. The results of all the monitoring will be shared in-season with the St. Paul Co-management Council to inform in-season adjustments and decision-making to ensure authorized take levels (including female mortality) are not exceeded, subsistence use is not being accomplished in a wasteful manner, and stress on non-targeted seals is being minimized.

NMFS's implementation of this new local participatory monitoring approach is more likely to improve conservation outcomes based on research by Danielsen *et al.* (2007) and Eerkes-Medrano *et al.* (2019). The commenters indicate that more Federal regulation of subsistence use of northern fur seals will ensure greater conservation value; however, Danielsen *et al.* (2007) shows that "investment in monitoring that combines scientific with participatory methods is strikingly more effective than a similar level of investment alone in generating conservation management interventions." Eerkes-Medrano *et al.* (2019) suggests that communities with negative previous experiences with scientists (*e.g.*, St. Paul) mistrust new projects and engagement by scientists and managers. They suggest that attempted top-down (*i.e.*, regulatory) approaches to management and monitoring are often unsuccessful and that only through respect and openness to local perspectives can engagement with local communities improve communication and conservation

outcomes. Consistent with this research, NMFS expects that the approach adopted in the final rule that increases the role of co-management in the monitoring and management of the hunting and harvest seasons on St. Paul Island will improve trust and communication between NMFS and the St. Paul community.

Comment 7: Two commenters expressed concerns about the reliability of self-reporting and that NMFS was relying solely on self-reporting to monitor subsistence use and delegating all subsistence use monitoring to the ACSPI.

Response 7: See response to comment 6. NMFS is not relying solely on self-reporting and intends to develop for St. Paul Island independent monitoring of the new subsistence hunting season and harvesting after August 8 while continuing to monitor, as needed, subsistence harvests at other times of the year. This approach of using multiple methods to monitor natural resource use is encouraged by Gavin *et al.* (2010). Multiple methods includes use of independent investigators (*i.e.*, NMFS, third party contractors, university researchers, and ACPSI) and retrospective surveys, self-reporting, and real-time observations to validate results and inform management. In addition, NMFS is investigating the use of randomized response techniques (Gavin *et al.*, 2010; Blair *et al.*, 2015; Blank and Gavin 2009) to assess compliance with regulatory and non-regulatory conservation measures and will work within the St. Paul Co-management Council process to implement such measures to evaluate compliance.

Comment 8: One commenter indicated that ACSPI maintains the authority for terminating the hunt at a specific threshold.

Response 8: NMFS disagrees that the ACSPI maintains the authority for terminating the hunting season on St. Paul Island. Under the final rule for St. Paul, the hunting and harvest seasons would terminate at the close of the seasons, if 20 female fur seals are killed, or when total mortality (juvenile males and females) reaches 2,000 fur seals. Under the final rule, the St. Paul Co-management Council will implement non-regulatory restrictions on St. Paul subsistence users, including decisions as to whether to terminate the hunt and/or harvest prior to reaching the regulatory limit on annual subsistence use. The St. Paul Co-management Council includes equal membership by NMFS and ACSPI.

Comment 9: Two commenters identified concerns about the level of

repeated disturbances to females as a result of subsistence use and need for regulatory restrictions to manage disturbances.

Response 9: We refer the reader to the responses to comments 5, 11, and 12 in the Comment Analysis Report (Appendix B) in NMFS (2019) (the 2019 St. Paul final SEIS). In summary, NMFS acknowledges concerns about the possible of effects of repeated subsistence use disturbance; however, the subsistence harvester behavior and research results to date on the Pribilof Islands indicate that it is unlikely that disturbance effects decrease the ability of the population to recover. For example, while it is possible under the regulations for harvests on St. George to occur twice per week, that has seldom occurred, and data indicate the harvest typically happens one time per week during either season (see <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports#subsistence-harvest-estimates>). Moreover, as explained in the 2014 St. George SEIS and the 2019 St. Paul SEIS, Ream and Sterling (2019) and Merrill (2019) found no differences in adult female foraging trip duration, on-shore attendance duration, and time of departure on the winter migration between harvested and non-harvested sites using the comparisons identified in their study design to detect effects from the pup harvest on St. George Island from 2016 through 2018. Gentry (1998) and Gentry (1981) examined numerous aspects of the commercial harvest of northern fur seals on the population. Gentry (1998) concluded *in regards to juvenile males* that, "It is the location of that site, not the location of kills, that makes a site favorable to fur seals. Fur seals appear not to choose sites by comparisons; any predictions that they will move among islands to avoid human activities is likely to be wrong." Further, *in regards to females*, "If they abandon a site it is because they are unable to reach it and still avoid males, not because some physical quality of the site is repellent" (Gentry 1998).

The commenters are asking NMFS to use Federal regulations to attempt to prevent a perceived problem that past evidence suggests will not occur. NMFS will continue to work through the St. George and St. Paul Co-management Councils to assess subsistence user behavior and determine appropriate non-regulatory measures to mitigate disturbance to females and other harassment of fur seals incidental to subsistence use as identified through co-management monitoring, NMFS

monitoring, and other observations by the public or fur seal researchers.

Comment 10: One commenter indicated that NMFS should not permit the use of firearms for subsistence use, as this will result in higher rates of struck and lost seals, and lead to a wasteful hunt.

Response 10: NMFS has identified that the subsistence needs of the Pribilofians on St. Paul Island are not currently being met during the winter and spring, and that the use of firearms is the only practical method to obtain fresh fur seal meat during those seasons. This method would be implemented for fur seals similarly to Steller sea lion hunting. The comparison to struck and lost rates during the terrestrial subsistence harvest is invalid, because fur seals are not reliably found on land during winter and spring and the hunting and harvest methods are very different. NMFS therefore used available data from hunts of Steller sea lions to estimate fur seal struck and loss rates during the hunting season. Although struck and lost rates per landed seal for hunting may be higher than for harvesting, the analyses in the 2014 St. George SEIS and 2019 St. Paul SEIS indicate that the expected level of struck and lost fur seals will remain low. NMFS expects hunting to comprise a small proportion of ACSPI's overall effort to obtain seals for subsistence use, so even if struck and lost rates initially are higher than anticipated, NMFS expects the number of seals lost to be small relative to the total take. In addition, the number of seals struck and lost by subsistence hunters will be estimated from monitoring by both NMFS and ACSPI, and those losses will be counted towards the total take each year.

NMFS and ACSPI will address the use of firearms and rates of struck and lost seals through the co-management process in order to monitor struck and lost rates based on hunting from land of seals in the water or on land and hunting from water of seals that are in water. Once data are available on hunting effort and performance, NMFS and ACSPI will review the data to make co-management decisions to identify hunting methods or locations to reduce struck and lost rates as needed. Overall, the intent is to assess the circumstance and locations that account for relatively higher struck and lost rates and to subsequently work with subsistence users to use hunting methods or alternative hunting locations that result in lower rates of struck and lost seals. NMFS and ACSPI will work through the co-management process to identify solutions and implement through co-

management, if additional limitations are required to limit high loss rates in order to ensure retrieval of struck fur seals consistent with the requirements of 50 CFR 216.71 and 50 CFR 216.3 regarding wasteful manner.

We also refer to the Comment Analysis Report (Response to Comments 14 and 15 in Appendix B) in the 2019 St. Paul Final SEIS (NMFS 2019).

Comment 11: One commenter expressed the need for the co-management process to solicit public input, provide transparency, and promote accountability.

Response 11: Co-management of subsistence use is authorized under Section 119 of the MMPA (16 U.S.C. 1388), and the negotiation of a revised co-management agreement is a government-to-government process between NMFS and ACSPI. Nevertheless, NMFS agrees that transparency and accountability are important considerations for improving co-management. NMFS will discuss with our co-management partners on St. Paul and St. George ways to promote accountability and increase transparency, such as posting subsistence harvest reports, subsistence use research reports, and the minutes from Co-management Council meetings on the web as soon as practical. In addition, NMFS notes that meetings of the Co-management Council are open to the public.

Comment 12: Two commenters recommend a regulatory prohibition on the intentional taking of female fur seals. One recommended this in addition to the authorization to take 20 females and the other commenter proposed the regulation instead of the authorization for 20 female mortalities.

Response 12: NMFS disagrees that prohibiting intentional taking of females in the regulations is necessary for fur seal subsistence use management. Enforcing a prohibition on intentional taking of females is problematic because of the difficulty in establishing intent. Also, as discussed in the response to comment 3 above, Section 102 of the FSA prohibits all taking of northern fur seals (16 U.S.C. 1152) in the absence of regulations under Section 105 authorizing the taking of northern fur seals on the Pribilof Islands (16 U.S.C. 1155(a)). Thus, no female fur seals may be taken beyond the specific limits in the final rule to account for unintended or accidental female takes: 20 females per year for St. Paul and 3 per year for St. George. If these limits are reached at any point during the year, the regulations require the termination of subsistence use activities for the remainder of the year. The regulations

also retain the suspension provision for St. George Island when 2 female fur seals have been killed (50 CFR 216.72(f)). For St. Paul, interim thresholds of female mortality to suspend subsistence use or other non-regulatory measures to avoid female mortality and harassment will be developed through the co-management process between NMFS and ACSPI.

Comment 13: One commenter recommends the need to retain the regulatory prohibition on harvesting sub-adult seals on St. Paul Island after August 8.

Response 13: NMFS disagrees with this recommendation. Please refer to the discussion in the SEIS (NMFS 2019), including responses to comments 1, 13, and 20 in the Comment Analysis Report (Appendix B) in the 2019 St. Paul final SEIS. In summary, the termination of subsistence use in the regulations if 20 females are killed is a strong incentive for subsistence users to make local decisions about whether to harvest sub-adult seals after August 8 (when more females are likely to be present among sub-adult male seals) and what precautions to use to avoid incidental take of females to lessen the risk of termination of subsistence use for the remainder of the year. Moreover, ACSPI and NMFS can adopt additional controls as needed via co-management, such as establishing separate seasons or limitations at specific locations or more strict limitations on female mortality, in addition to the regulatory limit on total annual female mortality. NMFS expects that these measures create sufficient incentives and controls to minimize the accidental taking of female fur seals in the future (including after August 8).

Comment 14: One commenter recommended the regulations include a number of requirements designed to minimize chances of taking female seals, limit disturbance, ensure humane taking, and independent monitoring.

Response 14: NMFS disagrees with this recommendation. Instead of prescribing additional regulatory limits on subsistence use, NMFS has determined that broad regulatory limitations of the total annual number of female and juvenile male mortalities and the hunting and harvesting seasons are sufficient to conserve and manage the northern fur seal population on St. Paul Island. Additional limitations on subsistence activities or use will be determined by consensus of the Co-management Council to be implemented and monitored to achieve positive conservation outcomes as described in the northern fur seal conservation plan.

Please refer to responses to comments 6, 7, and 9 above. Please also refer to the

discussion in the SEIS, including the response to comments 5 and 18 in the Comment Analysis Report in the 2019 St. Paul final SEIS (Appendix B of NMFS 2019).

Comment 15: One commenter indicated they were not in favor of changing the regulations to satisfy the Pribilof Island people.

Response 15: The FSA and MMPA both provide for the taking of northern fur seals to meet the subsistence needs of the Pribilof Islands Alaska Native residents (Pribilovians). NMFS's federal trust responsibilities under federal law and under the FSA and MMPA include recognizing the subsistence food needs (including nutritional and cultural needs) of Alaska Natives on St. Paul and St. George Islands to the fullest extent possible consistent with applicable statutes, implementing regulations, and co-management provisions, which allow for a formal framework for Alaska Native Organizations (like ACSPI) to develop co-management agreements with NMFS to conserve marine mammals and to cooperatively manage those stocks of marine mammals used for subsistence purposes. Please refer to the discussion in the 2019 St. Paul SEIS, Chapters 1.5 and 1.6, for more information on NMFS's Federal Trust Responsibilities and Co-Management of Fur Seals on the Pribilof Islands.

Comment 16: Two commenters expressed no concerns with the proposed rule.

Response 16: NMFS appreciates the public support for the rule.

Comment 17: One commenter encouraged NMFS to replace "traditional harvest methods" with "established harvest methods" under § 216.72(e)(2) as revised.

Response 17: NMFS agrees. The subsistence harvest methods that Pribilovians have used under the regulations were modeled after the methods used in the commercial harvest, and although they are considered humane for fur seals, they are not traditional methods used by the Unangan people prior to the commercial harvest. NMFS will revise the term as suggested by the commenter.

Changes From the Proposed Rule to the Final Rule

NMFS replaced "traditional harvest methods" with "established harvest methods" under § 216.72(e)(2), as suggested by a commenter (see response to comment 17 above).

NMFS made minor changes to the regulatory text from the proposed rule that do not change the intent or effect of these regulations. NMFS made minor revisions to the regulatory text in

§ 216.72(d) and (e)(3) to clarify that any female mortality during the year will be counted towards the total authorized mortality each year for each Island. NMFS also made minor revisions to the regulatory text in § 216.72(g)(2) to clarify that, for St. George Island, the male young of the year harvest will terminate when any of the following occurs: 150 young of the year fur seals have been harvested during that season, 500 fur seals total have been harvested over the course of both seasons (the male sub-adult season and the male young of the year season), or three females are killed.

NMFS replaced "harvest" with "subsistence use" under § 216.72(a), (f), and (g) and under § 216.74, where those regulations were referring to subsistence use on both St. Paul Island and St. George Island, for clarity and consistency with other regulatory changes. As addressed in this final rule, NMFS is establishing two subsistence use seasons on St. Paul: A hunting season from January 1 to May 31 (during which the use of firearms is allowed) and a harvest season from June 23 to December 31 (during which the use of firearms is prohibited and harvest will be by established harvest methods). The harvest seasons established in regulation for St. George are unchanged (the sub-adult harvest season from June 23 through August 8 and the young of the year harvest from September 16 through November 30) (50 CFR 216.72(d)). To ensure consistency within the regulations and to avoid confusion between the hunting and harvest seasons on St. Paul and the harvest seasons on St. George, NMFS replaced the term "harvest" when referring to subsistence use on both Islands with the term "subsistence use" throughout 50 CFR 216.72(a), (f), and (g) and 50 CFR 216.74.

Classification

NMFS has determined that this final rule is consistent with the FSA, MMPA, and other applicable laws. Pursuant to 5 U.S.C. 553(d), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in the effective date of this rule because such a delay would be contrary to the public interest. A delay in effectiveness of the revised regulations would preclude St. Paul residents from meeting their subsistence needs this year by delaying the resumption of the traditional pup fur seal harvest for a full year until 2020, and would delay regulatory revisions that implement more sustainable subsistence use practices. In addition, the Assistant Administrator finds that the regulations would relieve some

unnecessary subsistence use restrictions currently imposed on St. Paul residents by expanding the number of areas on the island where subsistence activities may occur, by allowing for subsistence use during a longer season, and by allowing for subsistence harvests of a younger age class of fur seals. The revised regulations would allow for sustainable harvesting and hunting practices that occurred historically, some of which are prohibited under the current regulations.

National Environmental Policy Act

NMFS prepared an SEIS evaluating the impacts on the human environment of the subsistence harvest of northern fur seals on St. Paul Island (NMFS 2019). NMFS also prepared a Supplemental Information Report to the St. George SEIS (NMFS 2014).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Regulatory Impact Review to carefully assess the costs and benefits of available regulatory alternatives and to assess those measures that maximize net benefits to the Nation. A copy of this Analysis is available from NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this final rule will not have a significant economic impact on a substantial number of small entities. NMFS published a proposed rule on August 14, 2018 (83 FR 40192). An initial regulatory flexibility analysis (IRFA) was prepared and included in the "Classification" section of the proposed rule. The comment period closed on September 13, 2018. No comments were received on the IRFA or regarding the potential certification at the final rule stage. The factual basis for certification is as follows:

This action directly regulates the subsistence use of northern fur seals by Alaska Natives residing in the communities of St. Paul and St. George. Individual Pribilovians, through the coordination of their tribal governments, organize volunteer crews to take northern fur seals consistent with the regulations. NMFS has identified two small tribal government entities that may be affected by this action—the Aleut Community of St. Paul Island, Tribal Government, and the Pribilof Island Aleut Community of St. George Island, Traditional Council (*i.e.*, both federally-recognized tribal

governments). The tribal governments on behalf of their members report on the level of the subsistence use of northern fur seals to NMFS and therefore may represent an affected small government jurisdiction. The tribal governments also participate as equal partners with NMFS in the co-management of subsistence resources and the conservation of marine mammals, pursuant to co-management agreements authorized under the MMPA.

NMFS expects this action to have positive economic impacts to the small governmental entities affected by the rule; no negative economic impacts are expected. This final rule, therefore, is not expected to have a significant economic impact on a substantial number of the small entities regulated by this proposed action. NMFS indicated its intent, in the proposed rule, to certify under the Regulatory Flexibility Act to provide potentially affected entities an opportunity to comment on potential certification. NMFS received no comments regarding directly regulated small entities and/or certification.

Executive Order 13175—Native Consultation

Executive Order 13175 of November 6, 2000, the executive Memorandum of April 29, 1994, the American Indian Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination Policy Statement (78 FR 33331; June 4, 2013) outline NMFS’s responsibilities in matters affecting tribal interests. Section 161 of Public Law 108–100 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. This final rule was developed through timely and meaningful consultation and collaboration with the tribal governments of St. Paul and St. George Islands and the local Native Corporations (Tanadgusix and Tanaq), and their input is incorporated herein.

Collection-of-Information Requirements

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), and which has been approved by OMB under control number 0648–0699. NMFS obtained OMB control number 0648–0699 for the regulations at 50 CFR 216.71–74, which apply to both St. Paul and St. George Islands. For St. Paul Island, public reporting burden for hunt and harvest reporting is estimated to average 40 hours per response,

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. There are no significant changes in the collection-of-information requirements for St. Paul or St. George as part of this action. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by email to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at http://www.cio.noaa.gov/services_programs/prasubs.html.

Dated: September 27, 2019.

Samuel D. Rauch, III,

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

List of Subjects in 50 CFR Part 216

Alaska, Marine mammals, Pribilof Islands, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, NMFS amends 50 CFR part 216 as follows:

PART 216—SUBPART F, PRIBILOF ISLANDS, TAKING FOR SUBSISTENCE PURPOSES

■ 1. The authority citation for 50 CFR part 216 continues to read as follows:

Authority: 16 U.S.C. 1151–1175. 16 U.S.C. 1361–1384

- 2. Amend § 216.72 by:
 - a. Revising the section heading;
 - b. Removing and reserving paragraph (b);
 - c. Revising paragraphs (d) introductory text and (d)(1);
 - d. Removing and reserving paragraphs (d)(3) and (5);
 - e. Revising paragraph (d)(6) introductory text;
 - f. Removing and reserving paragraph (d)(9); and
 - g. Revising paragraphs (e), (f), and (g).
- The revisions read as follows:

§ 216.72 Restrictions on subsistence use of fur seals.

(a) *St. George and St. Paul Islands.* The subsistence use of seals on St. Paul and St. George Islands shall be treated

independently for the purposes of this section. Any suspension, termination, or extension of subsistence use is applicable only to the island for which it is issued.

* * * * *

(d) *St. George Island.* The subsistence fur seal harvest restrictions described in paragraphs (d)(1) through (5) of this section apply exclusively to the harvest of sub-adult fur seals; restrictions that apply exclusively to the harvest of young of the year fur seals can be found in paragraphs (d)(6) through (11) of this section. For the taking of fur seals for subsistence uses, Pribilovians on St. George Island may harvest up to a total of 500 male fur seals per year over the course of both the sub-adult male harvest and the male young of the year harvest. Pribilovians are authorized each year up to three mortalities of female fur seals associated with the subsistence seasons. Any female fur seal mortalities will be included in the total authorized subsistence harvest of 500 fur seals per year.

(1) Pribilovians may only harvest sub-adult male fur seals 124.5 centimeters or less in length from June 23 through August 8 annually on St. George Island.

* * * * *

(6) Pribilovians may only harvest male young of the year from September 16 through November 30 annually on St. George Island. Pribilovians may harvest up to 150 male fur seal young of the year annually.

* * * * *

(e) *St. Paul Island.* For the taking of fur seals for subsistence uses, Pribilovians on St. Paul Island are authorized to take by hunt and harvest up to 2,000 juvenile (less than 7 years old, including pups) male fur seals per year.

(1) Juvenile male fur seals may be killed with firearms from January 1 through May 31 annually, or may be killed using alternative hunting methods developed through the St. Paul Island Co-management Council if those methods are consistent with § 216.71 and result in substantially similar effects. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) Juvenile male fur seals may be harvested without the use of firearms from June 23 through December 31 annually. Authorized harvest may be by established harvest methods of herding and stunning followed immediately by exsanguination, or by alternative harvest methods developed through the St. Paul Island Co-management Council if those methods are consistent with § 216.71

and result in substantially similar effects.

(3) Pribilovians are authorized each year up to 20 mortalities of female fur seals associated with the subsistence seasons. Any female fur seal mortalities will be included in the total number of fur seals authorized per year for subsistence uses (2,000).

(f) *Subsistence use suspension provisions.*

(1) The Assistant Administrator is required to suspend the take provided for in § 216.71 on St. George and/or St. Paul Islands, as appropriate, when:

(i) He or she determines that subsistence use is being conducted in a wasteful manner; or

(ii) With regard to St. George Island, two female fur seals have been killed during the subsistence seasons on St. George Island.

(2) A suspension based on a determination under paragraph (f)(1)(i) of this section may be lifted by the Assistant Administrator if he or she finds that the conditions that led to the determination that subsistence use was being conducted in a wasteful manner have been remedied.

(3) A suspension based on a determination under paragraph (f)(1)(ii) of this section may be lifted by the Assistant Administrator if he or she finds that the conditions that led to the killing of two female fur seals on St. George Island have been remedied and additional or improved methods to

detect female fur seals during the subsistence seasons are being implemented.

(g) *Subsistence use termination provisions.* The Assistant Administrator shall terminate the annual take provided for in § 216.71 on the Pribilof Islands, as follows:

(1) For St. Paul Island:

(i) For the hunting of juvenile male fur seals with firearms, at the end of the day on May 31 or when 2,000 fur seals have been killed, whichever comes first;

(ii) For the harvest of juvenile male fur seals without firearms, at the end of the day on December 31 or when 2,000 fur seals have been killed, whichever comes first; or

(iii) When 20 female fur seals have been killed during the subsistence seasons.

(2) For St. George Island:

(i) For the sub-adult male harvest, at the end of the day on August 8 or when 500 sub-adult male seals have been harvested, whichever comes first;

(ii) For the male young of the year harvest, at the end of the day on November 30 or earlier when either of the following occurs first: 150 male young of the year fur seals have been harvested or a total of 500 male sub-adult and male young of the year fur seals have been harvested; or

(iii) When three female fur seals have been killed during the subsistence seasons.

■ 3. Revise § 216.74 to read as follows:

§ 216.74 Cooperation between fur seal subsistence users, tribal and Federal officials.

Federal scientists and Pribilovians cooperatively manage the subsistence use of northern fur seals under section 119 of the Marine Mammal Protection Act (16 U.S.C. 1388). The federally recognized tribes on the Pribilof Islands have signed agreements describing a shared interest in the conservation and management of fur seals and the designation of co-management councils that meet and address the purposes of the co-management agreements for representatives from NMFS, St. George and St. Paul tribal governments. NMFS representatives are responsible for compiling information related to sources of human-caused mortality and serious injury of marine mammals. The Pribilovians are responsible for reporting their subsistence needs and actual level of subsistence take. This information is used to update stock assessment reports and make determinations under § 216.72. Pribilovians who take fur seals for subsistence uses collaborate with NMFS representatives and the respective Tribal representatives to consider best subsistence use practices under co-management and to facilitate scientific research.

[FR Doc. 2019-21450 Filed 9-27-19; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 84, No. 191

Wednesday, October 2, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–SC–19–0048; SC19–922–1 PR]

Marketing Order Regulating the Handling of Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Washington Apricot Marketing Committee (Committee) to increase the assessment rate established for the 2019–2020 and subsequent fiscal periods. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 1, 2019.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: dalej.novotny@usda.gov or GaryD.Olson@usda.gov. Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties of Washington. Part 922 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of apricot growers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Washington apricot handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the

proposed assessment rate would be applicable to all assessable Washington apricots for the 2019–2020 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Committee members are familiar with its needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate from \$1.00 to \$2.86 per ton of Washington apricots handled for the 2019–2020 and subsequent fiscal periods. The proposed higher rate is necessary to fund the Committee’s 2019–2020 fiscal period budgeted expenditures. Based on input received from growers at an annual meeting, the 2019 crop of Washington apricots is expected to be unusually low because of the effects of late season frost on budding orchard trees. The Committee believes that increasing the assessment rate would allow the Committee to fully fund its 2019–2020 budgeted expenses.

The Committee held a well-publicized meeting May 8, 2019, at which all interested parties were encouraged to participate in the discussions. However,

the Order's quorum requirement was not met and the Committee was not able to conduct official business. The following day, the Committee conducted the voting by email and unanimously recommended 2019–2020 fiscal period expenditures of \$8,325 and an assessment rate of \$2.86 per ton of apricots handled. The 2019–2020 fiscal period budgeted expenses are unchanged from the prior year. The proposed assessment rate of \$2.86 is \$1.86 higher than the \$1.00 per ton rate currently in effect.

The Committee recommended the assessment rate increase due to the anticipated reduced production level in 2019 resulting from a late season frost that damaged the crop. The 2018 crop was also smaller than the Committee had anticipated by 2,036 tons, which resulted in the Committee using more funds from its financial reserve than expected.

The major expenditures recommended by the Committee for the 2019–2020 fiscal period include \$4000 for program management contract services provided by the Washington State Fruit Commission, \$2,600 for annual audit and legal expenses, \$1,300 for Committee travel and meeting expenses, and \$425 for administrative expenses. In comparison, the aforementioned expense categories budgeted for the 2018–2019 fiscal period were the same amounts.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected apricot sales, and the amount of funds available in the authorized reserve. Expected income derived from handler assessments of \$9,438 (3,300 tons of apricots at \$2.86 per ton), would be adequate to cover budgeted expenses of \$8,325 and contribute \$1,113 to the Committee's financial reserve. Funds in the reserve (estimated to be \$7,211 at the beginning of the 2019–2020 fiscal period) would be kept within the maximum permitted by § 922.142(a) by not exceeding the expenses of approximately one fiscal period.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings

are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers and 13 handlers of apricots in the regulated production area subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to data from USDA Market News, the 2018 season average f.o.b. price for Washington apricots was approximately \$25.07 per carton. The Committee reported that the industry shipped 3,964 tons for the season, which equals approximately 528,533 cartons (3,964 tons at an approximate net weight of 15 pounds per carton). Using the number of handlers, and assuming a normal distribution, most handlers would have average annual receipts of less than \$7,500,000 (\$25.07 times 528,533 equals \$13,250,331 divided by 13 handlers equals \$1,019,256 per handler).

In addition, based on USDA National Agricultural Statistics Service data, the weighted average grower price for the 2018 season was \$1,330 per ton of apricots. Based on grower price, shipment data, and the total number of Washington apricot growers, and assuming a normal distribution, the average annual grower revenue is below

\$750,000 (\$1,330 times 3,964 tons equals \$5,272,120 divided by 315 growers equals \$16,737 per grower). Thus, most growers and handlers of Washington apricots may be classified as small entities.

This proposed rule would increase the assessment rate collected from handlers for the 2019–2020 and subsequent fiscal periods from \$1.00 to \$2.86 per ton of Washington apricots handled. The Committee unanimously recommended 2019–2020 fiscal period expenditures of \$8,325 and the \$2.86 per ton assessment rate. The proposed assessment rate of \$2.86 is \$1.86 higher than the rate for the 2018–2019 fiscal period. The Committee estimates that the industry will handle 3,300 tons of fresh, Washington apricots during the 2019–2020 fiscal period. Thus, the \$2.86 per ton rate should provide \$9,438 in assessment income. Income derived from handler assessments would be adequate to cover all budgeted expenses. In addition, the Committee anticipates adding \$1,113 to its monetary reserve in the 2019–2020 fiscal period.

The major expenditures recommended by the Committee for the 2019–2020 fiscal period include \$4000 for program management contract services provided by the Washington State Fruit Commission, \$2,600 for annual audit and legal expenses, \$1,300 for Committee travel and meeting expenses, and \$435 for administrative expenses. Those budgeted expenditures are unchanged from the previous fiscal period.

The proposed increased assessment rate is necessary to cover all the Committee's 2019–2020 fiscal period budgeted expenditures and replenish its financial reserve. The Committee has had to draw from its monetary reserve to partially fund program activities during previous fiscal periods.

Prior to arriving at this budget and assessment rate recommendation, the Committee considered maintaining the current assessment rate of \$1.00 per ton. However, after grower input and discussions at its May 8, 2019, meeting, the anticipated crop was downgraded from 5,500 to 3,300 tons. This amount of production at the current assessment level of \$1.00 per ton would not generate enough assessment income to fund the Committee's operations for the 2019–2020 fiscal period and allow it to maintain an adequate financial reserve. Based on estimated shipments, the recommended assessment rate of \$2.86 per ton of apricots should provide \$9,438 in assessment income. The Committee determined assessment revenue at the proposed higher rate

would be adequate to cover all budgeted expenditures for the 2019–2020 fiscal period and allow it to make a small contribution to its financial reserve. Reserve funds would be kept within the amount authorized in the Order.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average grower price for the 2019–2020 season should be approximately \$800–\$1,600 per ton of Washington apricots. Therefore, the estimated assessment revenue for the 2019–2020 marketing year as a percentage of total grower revenue would be between 0.18 and 0.36 percent.

This proposed action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the Washington apricot industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0178, Specialty Crops. No changes in those requirements would be necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is proposed to be amended as follows:

PART 922—MARKETING ORDER REGULATING THE HANDLING OF APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On and after April 1, 2019, an assessment rate of \$2.86 per ton is established for Washington apricots handled in the production area.

Dated: September 23, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–21023 Filed 10–1–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2018–BT–STD–0003]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Teleconference/Webinar for the Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps Working Group To Negotiate a Notice of Proposed Rulemaking for Test Procedures and Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Proposed rule; open teleconference/webinar.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces a webinar for the variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems) working group. The Federal Advisory Committee Act (FACA) requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: Tuesday, October 1, 2019 from 11:00 a.m. to 1:00 p.m. (EDT).

ADDRESSES: Webinar only. Please see the Public Participation section of this notice for additional information on webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–5B), 950 L'Enfant Plaza SW, Washington, DC 20024. Telephone: (202) 287–1692. Email: ASRAC@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On January 10, 2018, the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) met and passed the recommendation to form a VRF multi-split systems working group to meet and discuss and, if possible, reach a consensus on proposed Federal test procedures and energy conservation standards for VRF multi-split systems. On April 11, 2018, DOE published a notice of intent to establish a working group for VRF multi-split systems to negotiate a notice of proposed rulemaking for test procedures and energy conservation standards. The notice also solicited nominations for membership to the working group. 83 FR 15514.

On August 22, 2019, DOE published a notice announcing public meetings for the VRF working group. 84 FR 43731. This notice adds an October 1, 2019 webinar to the list of public meetings for the VRF working group.

DOE will host a webinar on October 1, 2019 from 11:00 a.m. to 1:00 p.m. (EDT).

The purpose of this meeting will be to negotiate in an attempt to reach consensus on proposed Federal test procedures and energy conservation standards for VRF multi-split systems.

Public Participation

Attendance at Webinar

The time and date of the webinar is listed in the **DATES** section of this document. If you plan to attend the public meeting, please notify the ASRAC staff at asrac@ee.doe.gov.

Please note that foreign nationals participating in the webinar are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the webinar, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed.

Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: <https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. Participants are responsible for ensuring their systems are compatible with the webinar software.

Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by postal mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Conduct of the Public Meetings

ASRAC's Designated Federal Officer will preside at the public meetings and may also use a professional facilitator to aid discussion. The meetings will not be judicial or evidentiary-type public hearings, but DOE will conduct them in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. A transcript of each public meeting will be included on DOE's website: <https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. In addition, any person may buy a copy of each transcript from the transcribing reporter. Public comment and statements will be allowed prior to the close of each meeting.

Docket

The docket is available for review at: <https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003>, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the <http://www.regulations.gov> index. However, not all documents listed in the index may be publically available, such as information that is exempt from public disclosure.

Signed in Washington, DC, on September 25, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019-21430 Filed 10-1-19; 8:45 am]

BILLING CODE 6450-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064-AF13

Removal of Transferred OTS Regulations Regarding Regulatory Reporting Requirements, Regulatory Reports and Audits of State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (proposal or proposed rule), the Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 390, subpart R, entitled *Regulatory Reporting Standards* (part 390, subpart R).

DATES: Comments must be received on or before November 1, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- **FDIC website:** <https://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.

- **Email:** Comments@fdic.gov. Include RIN 3064-AF13 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery to FDIC:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

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

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Christine M. Bouvier, Assistant Chief Accountant, (202) 898-7289, CBouvier@FDIC.gov, Division of Risk Management Supervision; Karen J. Currie, Senior Examination Specialist, (202) 898-3981, Division of Risk Management Supervision; David M. Miles, Counsel, Legal Division, (202) 898-3651.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the proposed rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary ones and thereby improving ease of reference and public understanding. The second is to promote parity between State savings associations and State nonmember banks by having the regulatory reporting requirements, regulatory reports and audits of both classes of institutions addressed in the same FDIC rules.

II. Background

A. The Dodd-Frank Act

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.¹ Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,² the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act³ provides the manner of treatment for all orders,

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² Codified at 12 U.S.C. 5411.

³ Codified at 12 U.S.C. 5414(b).

resolutions, determinations, regulations, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,⁴ on June 14, 2011, the FDIC's Board of Directors (Board) approved a "List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act." This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.⁵

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act⁶ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)⁷ and other laws as the "appropriate Federal banking agency" or under similar statutory terminology. Section 312(c)(1) of the Dodd-Frank Act⁸ revised the definition of "appropriate Federal banking agency" contained in section 3(q) of the FDI Act,⁹ to add State savings associations to the list of entities for which the FDIC is designated as the "appropriate Federal banking agency." As a result, when the FDIC acts as the designated "appropriate Federal banking agency" (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and State-licensed insured branches of foreign banks.

As noted above, on June 14, 2011, operating pursuant to this authority, the Board issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. On that same date, the Board reissued and redesignated certain regulations transferred from the former OTS. These transferred OTS regulations were published as new FDIC regulations

in the **Federal Register** on August 5, 2011.¹⁰ When the FDIC republished the transferred OTS regulations as new FDIC regulations, it specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.¹¹

B. Transferred OTS Regulations (Transferred to the FDIC's Part 390, Subpart R)

A subset of the regulations transferred to the FDIC from the OTS concern regulatory reporting requirements, regulatory reports and audits of State savings associations. The OTS regulations, formerly found at 12 CFR part 562, now comprise 12 CFR part 390, subpart R. The provisions of part 390, subpart R, are discussed in Part III of this Supplementary Information section, below.

The FDIC has conducted a careful review and comparison of part 390, subpart R, and other FDIC regulations that pertain to regulatory reporting requirements (12 CFR part 304, 12 CFR part 363 and its Appendices A and B, and 12 CFR part 364 and its Appendix A), regulatory reports (12 CFR part 304 and 12 CFR part 308), and audits of insured depository institutions (12 CFR part 363 and its Appendices A and B and 12 CFR part 364 and its Appendix A) that already apply to State savings associations. As discussed in Part III of this Supplementary Information section, the FDIC proposes to rescind part 390, subpart R, because the FDIC considers it to be redundant or otherwise unnecessary given the applicability of these other FDIC regulations.

III. Comparison of the Transferred OTS Regulations Proposed for Removal With Other Applicable FDIC Regulations

A. Regulatory Reporting Requirements: State Savings Associations Must Maintain Business Records Supporting and Easily Reconciled to Their Regulatory Reports and GAAP Financial Statements and Must Use the Forms and Follow the Instructions of the FDIC in Preparing Regulatory Reports

1. Transferred OTS Regulation Currently at 12 CFR part 390.320

Section 390.320 imposes two requirements upon State savings associations designed to help maintain the integrity, accuracy, reliability and uniformity of key documents used by the FDIC for supervisory purposes. First,

section 390.320(a) requires each State savings association to maintain accurate and complete records of its business transactions that support and are readily reconcilable to the association's regulatory reports and to financial reports prepared in accordance with generally accepted accounting principles (GAAP).¹² Second, section 390.320(b) instructs each State savings association to prepare its regulatory reports using such forms and following such regulatory reporting requirements as the FDIC may require by regulation or otherwise.¹³

2. Other FDIC Regulations

State savings associations are already subject to other FDIC regulations that achieve the purposes of section 390.320. For example, as recognized by section 304.3 of the FDIC's regulations, all insured depository institutions, including State savings associations, are required to file quarterly Consolidated Reports of Condition and Income (Call Reports). Under section 304.3(a), all insured depository institutions must prepare the Call Report in accordance with the instructions for the report (Call Report Instructions), which in turn require the institutions to maintain their business records in a manner that supports and reconciles to the contents of the Call Report.¹⁴ In addition, portions of the Call Report also are required to be prepared in accordance with GAAP.¹⁵ Furthermore, all insured depository institutions, including State savings associations, with total assets of \$500 million or more at the beginning of their respective fiscal year ("covered institutions") must prepare annual financial statements in accordance with GAAP, which must be submitted to the FDIC, the appropriate Federal banking

¹² 12 CFR 390.320(b). Subpart R defines the term "regulatory report" to mean "any report that the FDIC prepares, or is submitted to, or used by the FDIC, to determine compliance with its rules and regulations, and to evaluate the safe and sound condition and operations of State savings associations. Regulatory reports are regulatory documents, not accounting documents." 12 CFR 390.321(a).

¹³ 12 CFR 390.320(b).

¹⁴ See the section entitled "Preparation of the Reports" contained in the General Instructions portion of Call Report Instructions for the FFIEC 031, 041 and 051 Report Forms and the section entitled "Preparation of Information to be Reported" in the General Instructions portion of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002 Report Form).

¹⁵ 12 U.S.C. 1831(n); See the section entitled "Applicability of U.S. Generally Accepted Accounting Principles to Regulatory Reporting Requirements" contained in the General Instructions portion of Call Report Instructions for the FFIEC 031, 041 and 051 Report Forms and the section entitled "Accounting Basis" in the General Instructions portion of the FFIEC 002 Report Form.

⁴ Codified at 12 U.S.C. 5414(c).

⁵ 76 FR 39246 (July 6, 2011).

⁶ Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

⁷ 12 U.S.C. 1811 *et seq.*

⁸ Codified at 12 U.S.C. 5412(c)(1).

⁹ 12 U.S.C. 1813(q).

¹⁰ 76 FR 47652 (Aug. 5, 2011).

¹¹ See 76 FR 47653.

agency for the institution (if not the FDIC) and the appropriate State bank supervisor if applicable.¹⁶

In addition, all State savings associations and other FDIC-supervised institutions are subject to 12 CFR part 364 (including its Appendix A).¹⁷ This part requires FDIC-supervised institutions to have internal controls and information systems that are appropriate to their size and the risks posed by their activities and that provide for, among other things: “timely and accurate financial, operational and regulatory reports.”¹⁸ Because accurate and complete business records are the very foundation of accurate regulatory and financial reporting, State savings associations must, therefore, maintain accurate and complete records of their business transactions supporting and readily reconcilable to the associations’ regulatory and financial reports. In the event an FDIC-supervised institution fails to create and maintain the required internal controls and information systems, the FDIC may require the institution to submit a safety and soundness plan designed to correct the deficiencies and, if necessary, compel compliance by means of order.¹⁹

In addition, existing FDIC regulations also require State savings associations and other FDIC-supervised institutions to use the forms and follow the instructions of the FDIC in preparing and submitting their regulatory reports. For example, section 304.3(a) of the FDIC’s regulations requires all insured depository institutions, including State savings associations, to follow the Call Report Instructions in preparing their Call Reports.²⁰ Moreover, it is difficult to see how an institution could fail to comply with relevant instructions governing regulatory reports and yet still file a timely, accurate and complete report in accordance with the explicit or implicit requirements of the governing statute or regulation.

B. Regulatory Reports: State Savings Associations Must Prepare Regulatory Reports Using GAAP and Safe & Sound Practices

1. Transferred OTS Regulation Currently at 12 CFR Part 390.321

The transferred OTS regulation found at 12 CFR 390.321(b)(1) provides a framework of “regulatory reporting requirements” governing the preparation of regulatory reports by State savings associations. Such requirements must, at a minimum, incorporate GAAP whenever called for; incorporate applicable safe and sound practices specified in the report instructions and other FDIC publications; and incorporate such additional safety and soundness requirements more stringent than GAAP as the FDIC may prescribe.²¹ If the FDIC determines that a State savings association’s regulatory reports for previous reporting periods are not in compliance, the association must correct the reports in accordance with the directions of the FDIC.²²

2. Other FDIC Regulations

A similar framework is embodied in other applicable FDIC regulations. For example, 12 CFR part 304 requires all insured depository institutions to prepare their Call Reports in accordance with the Call Report Instructions. The Call Report Instructions, published by the Federal Financial Institutions Examination Council (FFIEC), contain uniform reporting requirements that the Federal banking agencies, including the FDIC, have determined to be consistent with GAAP and other regulatory reporting requirements.²³ In the event of a failure by a State savings association to follow the Call Report Instructions, the FDIC is empowered to take enforcement action to obtain specified civil money penalties for as long as the violation remains uncorrected.²⁴ The FDIC also may be able to seek a cease-

and-desist order to prevent an impending or ongoing violation and to require corrective action to remedy violations in prior reporting periods.²⁵

C. Audits

1. Transferred OTS Regulation Currently at 12 CFR Part 390.322

The transferred OTS regulation currently found at 12 CFR 390.322 relates to audits of financial statements by qualified independent public accountants. This provision authorizes the FDIC, whenever needed for safety or soundness purposes, to require a State savings association to retain a qualified independent public accountant to conduct an independent audit of the association’s financial statements.²⁶

2. Other FDIC Regulations

Other FDIC requirements applicable to all insured depository institutions serve the underlying purposes of section 390.322. For example, as noted previously, all FDIC-supervised institutions, including State savings associations, are required by part 364 Appendix A to maintain internal controls that provide for “timely and accurate financial, operational and regulatory reports” along with an internal audit system that provides for adequate monitoring of the internal controls system.²⁷ In the event an FDIC-supervised institution fails to create and maintain the required internal controls and information systems, the FDIC may require the institution to submit a safety and soundness plan designed to correct the deficiencies and, if necessary, compel compliance by means of order.²⁸ The FDIC has the ability, pursuant to its examination and safety and soundness authority, to obtain records and reports from State savings associations.²⁹ In

²⁵ 12 U.S.C. 1817(a), (c); 1818(b); 1464(v). Because FDIC statutes and regulations do not require FDIC-supervised institutions to deviate from GAAP in the preparation of their annual financial statements, there is no need to include the exception discussed in footnote 21, *supra*.

²⁶ Although 12 CFR 390.322 by its terms mandates such an audit for a State savings association with a composite examination rating of 3, 4, or 5, Section 322 allows the FDIC to forego an audit if it would not provide further information on safety and soundness matters relating to the examination rating. See 12 CFR 390.322(c)(2).

²⁷ 12 CFR part 364 Appendix A sections II A and B. For an institution whose size, complexity or scope of operations does not warrant a full scale internal audit function, a system of independent reviews of key internal controls may be used.

²⁸ See 12 U.S.C. 1831p–1(e); 12 CFR 308.300, *et seq.* State savings associations may also wish to consult the *Interagency Statement of Policy on the Internal Audit Function and Its Outsourcing* for additional agency recommendations and sound banking practices.

²⁹ See 12 U.S.C. 1464(d); 1831p–1(e).

¹⁶ 12 U.S.C. 1831(m); 12 CFR part 363.

¹⁷ 12 CFR 364.101. Part 364 and its appendices implement section 39(a) of the FDI Act. 12 U.S.C. 1831p–1. Taken together, part 364 and Appendix A reflect the FDIC’s longstanding expectations for all prudently managed FDIC-supervised institutions while generally leaving the specific methods of achieving these objectives to each institution.

¹⁸ 12 CFR part 364, Appendix A II.

¹⁹ See 12 U.S.C. 1831p–1(e); 12 CFR 308.300, *et seq.*; 12 CFR part 364, Appendix A.

²⁰ 12 CFR 304.3(a). See 12 U.S.C. 1817(a); 12 U.S.C. 1464(v).

²¹ 12 CFR 390.321(b)(2) has an “exception” making clear that State savings associations are not required to reflect any regulatory reporting requirements not consistent with GAAP in audited financial statements, including financial statements contained in securities filings submitted to the FDIC pursuant to the Securities Exchange Act of 1934 or subpart W and 12 CFR part 192. See 12 CFR 390.321(b).

²² See 12 CFR 390.321(b).

²³ See the section entitled “Applicability of U.S. Generally Accepted Accounting Principles to Regulatory Reporting Requirements” contained in the General Instructions portion of Call Report Instructions for the FFIEC 031, 041 and 051 Report Forms and the section entitled “Accounting Basis” in the General Instructions portion of the FFIEC 002 Report Form.

²⁴ 12 U.S.C. 1818(i)(2); 12 CFR part 308, subpart H.

addition, through the safety and soundness plan, the FDIC may request an independent audit of a State savings association.³⁰ If the State savings association does not provide an acceptable plan to the FDIC and implement it, the FDIC may be able to require such audit pursuant to a safety and soundness order if such measures relate to identified safety and soundness deficiencies.

In addition, insured depository institutions are required by law to file Call Reports that are free from false or misleading information and the FDIC is empowered to take enforcement action in the event that an institution fails to do so. In the event a State savings association's financial statements do not accurately reflect the association's financial condition or results of operations, the inaccuracy is likely to flow from the financial statements into the Call Report, in contravention of the Call Report Instructions. If a State savings association's Call Report contains such a material inaccuracy, the FDIC can require the savings association to amend its Call Report to correct that material inaccuracy and, depending on the facts and circumstances, the correction may necessitate the revision of the savings association's financial statements. If a savings association refuses to make a required amendment to its Call Report, the FDIC may be able to seek a cease-and-desist order to require corrective action to remedy violations in prior reporting periods.³¹ In addition, the FDIC is empowered to obtain specified civil money penalties for as long as the problems remain uncorrected.³²

In addition, the FDIC's regulations independently impose audit requirements for many institutions, including several State savings associations. For example, 12 CFR part 363 requires covered institutions (those with \$500 million or more in assets) each year to submit annual financial statements that have been prepared in accordance with GAAP and have been audited by an independent public accountant.³³

³⁰ See 12 U.S.C. 1464(d), 1831p-1. See also 82 FR 8082, 8099 (Jan. 23, 2017). State savings associations also may be subject to audit requirements under applicable state law or as required by the appropriate State bank supervisor.

³¹ 12 U.S.C. 1817(a), (c); 1818(b); 1464(v).

³² 12 U.S.C. 1818(i)(2); 12 CFR part 308, subpart H.

³³ 12 CFR 363.4(a). Part 363 also requires covered institutions to prepare a management report each year containing a statement of management's responsibilities for, among other things, preparing the institution's financial statements, establishing and maintaining an adequate internal control structure and procedure for financial reporting, and

IV. Proposed Amendments to Part 390, Subpart R

As discussed in Part III of this Supplementary Information, the FDIC's part 390 subpart R addresses regulatory reporting requirements, regulatory reports and audits. After reviewing the requirements in part 390, subpart R, the FDIC, as the appropriate Federal banking agency for State savings associations, proposes to rescind part 390, subpart R in its entirety. Rescinding part 390, subpart R will serve to streamline the FDIC's rules and eliminate redundant, duplicate or otherwise unnecessary regulations in light of other FDIC regulations that specifically govern these matters and apply to insured depository institutions, including State savings associations.

V. Expected Effects

As explained in detail in Part III of this Supplementary Information section, certain OTS regulations transferred to the FDIC by the Dodd-Frank Act relating to regulatory reporting requirements, regulatory reports, and audits of State savings associations are redundant or unnecessary in light of applicable statutes and other FDIC regulations. This proposal would eliminate those transferred OTS regulations.

As of June 30, 2019, the FDIC supervises 3,424 depository institutions, of which 38 (1.1%) are State savings associations.³⁴ The proposed rule would affect regulations that govern State savings associations.

As explained previously, the proposed rule would remove sections 390.320, 390.321 and 390.332 of part 390, subpart R because these sections are redundant of, or otherwise unnecessary in light of, applicable statutes and other FDIC regulations regarding audits, reporting, and safety and soundness. As a result, rescinding and removing these regulations will not have any substantive effects on State

complying with certain laws and regulations relating to safety and soundness. 12 CFR 363.2(b)(1). The report must also contain management's assessment of the institution's compliance with those laws and regulations during the fiscal year. 12 CFR 363.2(b)(2). For covered institutions with consolidated total assets of \$1 billion or more, the management report must also include management's assessment of the effectiveness of the internal control structure and procedures for financial reporting. 12 CFR 363.2(b)(3). Management's internal control assessment must be examined, attested to and reported on by an independent accountant. 12 CFR 363.3(b). State savings associations may also wish to consult the *Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations* for additional agency recommendations and sound banking practices.

³⁴ Based on data from the June 30, 2019, Call Report and FFIEC 002 Report Form.

savings associations or FDIC-supervised institutions.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

VI. Alternatives

The FDIC has considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for covered entities. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to regulatory reporting standards and audits of insured depository institutions, including 12 CFR part 304; 12 CFR part 308; 12 CFR part 363 and its Appendices A and B; 12 CFR part 364 and its Appendix A; and 12 CFR part 390, subpart R. The FDIC considered the status quo alternative of retaining the current regulations but did not choose to do so because the underlying purposes of those regulations are already accomplished through substantively similar regulations regarding regulatory reports, regulatory reporting requirements, and audits. Therefore, the FDIC is proposing to amend and streamline the FDIC's regulations.

VII. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. In particular, the FDIC requests comments on the following questions:

1. *Are the statutes and FDIC rules and regulations discussed in this Supplementary Information section sufficient to provide consistent and effective requirements relating to regulatory reporting requirements, regulatory reports and audits of State savings associations for which the FDIC is the appropriate Federal banking agency? Please provide examples, data, or otherwise substantiate your answer.*

2. *What negative impacts, if any, can you foresee in the FDIC's proposal to rescind part 390, subpart R?*

3. *Please provide any other comments you have on the proposal.*

Written comments must be received by the FDIC no later than November 1, 2019.

VIII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),³⁵ the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed rule would rescind and remove from FDIC regulations part 390, subpart R. The proposed rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.³⁶ However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$550 million.³⁷ Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a

substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of March 31, 2019,³⁸ the FDIC supervised 3,465 insured financial institutions, of which 2,705 are considered small banking organizations for the purposes of RFA. The proposed rule primarily affects regulations that govern State savings associations. There are 35 State savings associations considered to be small banking organizations for the purposes of the RFA.³⁹

As explained previously, the proposed rule would remove sections 390.320, 390.321 and 390.332 of part 390, subpart R because these sections are redundant or otherwise unnecessary in light of applicable statutes and other FDIC regulations. As a result, rescinding the regulations would not have any substantive effects on small FDIC-supervised institutions.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

4. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act⁴⁰ requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind part 390, subpart R in a simple and straightforward manner. *The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.*

D. Riegle Community Development and Regulatory Improvement Act of 1994

Riegle Community Development and Regulatory Improvement Act of 1994 (“RCDRIA”) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new

regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The FDIC invites comments that further will inform its consideration of RCDRIA.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.⁴¹ The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017, (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing unnecessary regulations, such as part 390, subpart R, this rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

List of Subjects in 12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR 390 as follows:

³⁵ 44 U.S.C. 3501–3521.

³⁶ 5 U.S.C. 601, *et seq.*

³⁷ The SBA defines a small banking organization as having \$600 million or less in assets, where an organization’s “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). In its determination, “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of the RFA.

³⁸ March 31, 2019, is the most recent period for which the FDIC’s “small entity” designations for depository institutions are available.

³⁹ Based on data from the March 31, 2019, Call Report and FFIEC 002 Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Bank.

⁴⁰ Pub. L. 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

⁴¹ Pub. L. 104–208, 110 Stat. 3009 (1996).

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

- 1. Revise the authority citation for part 390 to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.*, 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart M also issued under 12 U.S.C. 1818.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78w.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart R—[Removed and Reserved]

- 2. Remove and reserve part 390, subpart R, consisting of §§ 390.320 through 390.322.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–20610 Filed 10–1–19; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 27, 29, 91, 121, 125, and 135

[Docket No.: FAA–2019–0491; Notice No. 19–09A]

RIN 2120–AK34

Interior Parts and Components Fire Protection for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was

published in the **Federal Register** on July 3, 2019. In the NPRM, the FAA proposed to amend certain airworthiness regulations for fire protection of interior compartments on transport category airplanes. The proposal would convert those flammability regulations from detailed, prescriptive requirements into simpler, performance-based standards. The proposal would divide these standards into two categories: those designed to protect the airplane and its occupants from the hazards of in-flight fires, and those designed to protect the airplane and its occupants from the hazards caused by post-crash fires. In addition, the proposal would remove test methods from the regulations and allow applicants, in certain cases, to demonstrate compliance either without conducting tests or by providing independent substantiation of the flammability characteristics of a proposed material. The proposal includes conforming changes to various FAA regulations. The proposal is necessary to eliminate unnecessary testing, increase standardization, and improve safety. The FAA is extending the closing date of the comment period to allow commenters time to adequately analyze the proposal and prepare responses.

DATES: The comment period for the NPRM published on July 3, 2019 (84 FR 31747), and scheduled to close on October 1, 2019, is extended until December 2, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0491 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: 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.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, AIR–600, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198; telephone (206) 231–3146; email Jeff.Gardlin@faa.gov.

SUPPLEMENTARY INFORMATION:

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

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, you should clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jeff Gardlin at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies; or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

Background

On July 3, 2019, the FAA published the NPRM entitled "Interior Parts and Components Fire Protection for Transport Category Airplanes," Notice No. 19-09, in the **Federal Register** (84 FR 31747). Commenters were instructed to provide comments on or before October 1, 2019. Since publication, 11

commenters¹ have requested an extension of the comment period, citing the magnitude of changes and restructuring of existing flammability regulations. Two commenters requested an additional 90 days, 6 commenters an additional 120 days, and 3 others an additional 180 days. The commenters stated a longer timeframe is necessary to properly assess and coordinate the potential impact to design, materials, certification implementation, and to develop constructive feedback. In addition, the commenters stated that certain test methods being developed by the FAA are not yet fully developed or validated.

The FAA agrees with the petitioners' request for an extension of the comment period. The FAA recognizes that, given the scope of proposed changes is extensive and the subject complex, an extension of the comment period would help commenters craft complete and thoughtful responses. Although the minimum requested extension was 90 days, which is the length of the original comment period, such an extension would delay any action of the final rule until 2020. A 60-day extension (in this case 62 days to avoid a weekend) would be consistent with similar actions in the past and would allow the FAA to begin positioning comments in 2019. Therefore, the FAA agrees to extend the comment period an additional 62 days. With this extension, the comment period will now close on December 2, 2019. This will provide the public with a total of 152 days to conduct its review. The FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with 14 CFR 11.47(c), the FAA has reviewed the petitions for extension of the comment period for Notice No. 19-09. The petitioners have shown a substantive interest in the proposed rule and good cause for an extension of the comment period. The FAA has determined that an extension of the comment period for an additional 62 days to December 2, 2019, is in the public interest. Accordingly, in accordance with § 11.47 of title 14, Code of Federal Regulations, the comment period for Notice No. 19-09 is extended until December 2, 2019.

¹ The commenters are Airbus SAS, The Boeing Company, Bombardier Aviation, Embraer S.A., F.List GmbH (F/List), General Aviation Manufacturers Association (GAMA), Gulfstream Aerospace Corporation, International Coordinating Council of Aerospace Industries Associations—Cabin Safety Working Group, Nitto ATP Finals, Safran Cabin Inc., and SEKISUI Polymer Innovations, LLC.

Issued under the authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on September 24, 2019.

Forest Rawls III,

Acting Deputy Executive Director, Office of Rulemaking.

[FR Doc. 2019-21060 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 425

RIN 3084-AB54

Rule Concerning the Use of Prenotification Negative Option Plans

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") seeks public comment on the need for amendments to the Commission's "Rule Concerning the Use of Prenotification Negative Option Plans" (*i.e.*, "Negative Option Rule" or "Rule") to help consumers avoid recurring payments for products and services they did not intend to order and to allow them to cancel such payments without unwarranted obstacles.

DATES: Comments must be received on or before December 2, 2019.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "16 CFR part 425—Negative Option Rule, Project No. P064202" on your comment, and file your comment online at <https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Negative Option Rule (16 CFR part 425) (Project No. P064202)" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202-326-2889), Attorney, Division of Enforcement,

Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Overview

The Commission seeks comments on ways to improve its existing regulations for negative option marketing, a common form of marketing where the absence of affirmative consumer action constitutes assent to be charged for goods or services. Negative option offers are widespread in the marketplace and can provide substantial benefits for sellers and consumers. However, consumers cannot reap such benefits when marketers fail to make adequate disclosures, bill consumers without their consent, or make cancellation difficult or impossible. Over the years, such problematic negative option practices have remained a persistent source of consumer harm, often saddling consumers with recurring payments for products and programs they did not intend to purchase or did not want. In the past, the Commission has sought to address such practices through individual law enforcement cases and a patchwork of regulations. Nevertheless, problems persist, and consumers continue to submit thousands of complaints to the FTC each year about negative option marketing. To address these concerns, the Commission seeks comments on ways to improve existing regulatory requirements, including whether it should use its rulemaking authority under the FTC Act to expand the scope and coverage of the existing Negative Option Rule.¹

II. Negative Option Marketing

A “negative option” is any type of sales term or condition that allows a seller to interpret a customer’s silence, or failure to take an affirmative action, as acceptance of an offer.² Negative option marketing generally falls into four categories: Prenotification negative option plans, continuity plans, automatic renewals, and free-to-pay or nominal-fee-to-pay conversion offers.

Prenotification plans are the only negative option practice currently covered by the Commission’s Negative

Option Rule. Under such plans (e.g., book-of-the-month clubs), sellers send periodic notices offering goods to participating consumers and then send—and charge for—those goods only if the consumers take no action to decline the offer. The periodic announcements and shipments can continue indefinitely. In continuity plans, consumers agree in advance to receive periodic shipments of goods or provision of services (e.g., bottled water delivery), which they continue to receive until they cancel the agreement. In automatic renewals, sellers (e.g., a magazine publisher) automatically renew consumers’ subscriptions when they expire and charge for them, unless consumers affirmatively cancel the subscriptions. Finally, in free-to-pay or nominal-fee-to-pay plans, consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services.

Some negative option offers include upsell or bundled offers, where sellers use consumers’ billing data for additional products from the same seller or pass consumers’ billing data to a third party for additional offers. An upsell occurs when a consumer completes a first transaction and then receives a solicitation for an additional product or service. A bundled offer occurs when a seller packages two products or services together so that they cannot be purchased separately.

III. FTC’s Negative Option Rule

The Commission first promulgated the Rule in 1973 pursuant to the FTC Act, 15 U.S.C. 41 *et seq.*, after finding that some negative option marketers had committed unfair and deceptive marketing practices that violated Section 5 of the Act, 15 U.S.C. 45. As discussed above, the Rule only applies to prenotification plans for the sale of goods and does not reach most modern negative option marketing.³

The Rule requires prenotification plan sellers to clearly and conspicuously disclose their plan’s material terms before consumers subscribe. It enumerates seven material terms sellers must disclose clearly and conspicuously including: (1) How subscribers must

notify the seller if they do not wish to purchase the selection; (2) any minimum purchase obligations; (3) the subscribers’ right to cancel; (4) whether billing charges include postage and handling; (5) that subscribers have at least ten days to reject a selection; (6) that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and (7) the frequency with which announcements and forms will be sent.⁴ In addition, sellers must follow certain procedures, including: Abiding by particular time periods during which sellers must send introductory merchandise and announcements identifying merchandise the seller plans to send; giving consumers a specified period to respond to announcements; providing instructions for rejecting merchandise in announcements; and promptly honoring written requests to cancel from consumers who have met any minimum purchase requirements.⁵

IV. Existing Regulatory Requirements

In addition to the Negative Option Rule, several other statutes and regulations address harmful negative option practices. First, Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, has traditionally served as the Commission’s primary mechanism for addressing these types of cases. Additionally, the Restore Online Shoppers’ Confidence Act (“ROSCA”) (15 U.S.C. 8401–8405), the Telemarketing Sales Rule (16 CFR part 310), the Postal Reorganization Act (“PRA”) (*i.e.*, the Unordered Merchandise Statute) (39 U.S.C. 3009), and the Electronic Fund Transfer Act (“EFTA”) (15 U.S.C. 1693–1693r) all address various aspects of negative option marketing. ROSCA, however, is the only law primarily designed to do so.

A. Section 5 of the FTC Act

The basic consumer protection statute enforced by the Commission is Section 5(a) of the FTC Act (15 U.S.C. 45(a)(1)). This provision states that “unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful.”⁶ In past guidance

¹ Section 18 of the FTC Act authorizes the Commission to promulgate rules specifying acts or practices in or affecting commerce which are unfair or deceptive. 15 U.S.C. 57a(a)(2).

² The Commission’s Telemarketing Sales Rule defines a negative option feature as a provision in an offer or agreement to sell or provide any goods or services “under which the customer’s silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.” 16 CFR 310.2(w).

³ The Rule defines “negative option plan” narrowly to apply only to prenotification plans. 16 CFR 425.1(c)(1). The Rule covers prenotification plan marketing in all media. In 1998, the Commission clarified that the Rule “covers all promotional materials that contain a means for consumers to subscribe to prenotification negative option plans, including those that are disseminated through newer technologies” 63 FR 44555, 44561 (Aug. 20, 1998).

⁴ 16 CFR 425.1(a)(1)(i)–(vii).

⁵ 16 CFR 425.1(a)(2) and (3); 425.1(b).

⁶ The FTC Act defines “unfair or deceptive acts or practices” to include such acts or practices involving foreign commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States (15 U.S.C. 45(a)(4)(A)). It also defines “unfair” practices as those that cause or are likely “to cause substantial injury to consumers which is not reasonably avoidable by

and cases, the FTC has highlighted five basic Section 5 requirements that negative option marketing must follow to avoid deception.⁷ First, marketers must disclose the material terms of a negative option offer including, at a minimum, the following key terms: The existence of the negative option offer; the offer's total cost; the transfer of a consumer's billing information to a third party, if applicable; and how to cancel the offer. Second, Section 5 requires that disclosures be clear and conspicuous. Third, sellers must disclose the material terms of the negative option offer before consumers agree to the purchase. Fourth, marketers must obtain consumers' consent to such offers. Finally, marketers must not impede the effective operation of promised cancellation procedures, and should honor cancellation requests that comply with such procedures.

Although adherence to these five principles should minimize the likelihood of non-compliance with Section 5, the legality of a particular negative option depends on an individualized assessment of the advertisement's net impression and the marketer's business practices. In addition to these deception-related requirements, the Commission has indicated that billing consumers without consumers' express informed consent is an unfair act under the FTC Act.⁸

consumers themselves and not outweighed by countervailing benefits to consumers or to competition" (15 U.S.C. 45(n)).

⁷ See *Negative Options: A Report by the Staff of the FTC's Division of Enforcement*, 26–29 (Jan. 2009), <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>. In discussing the five principal Section 5 requirements related to negative options, the report cites to the following pre-ROSCA cases, *FTC v. JAB Ventures*, No. CV08–04648 (C.D. Cal. 2008); *FTC v. Complete Weightloss Center*, No. 1:08cv00053 (D.N.D. 2008); *FTC v. Berkeley Premium Nutraceuticals*, No. 1:06cv00051 (S.D. Ohio 2006); *FTC v. Think All Publ'g*, No. 4:07cv11 (E.D. Tex. 2006); *FTC v. Hispanexo*, No. 1:06cv424 (E.D. Va. 2006); *FTC v. Consumerinfo.com*, No. SACV05–801 (C.D. Cal. 2005); *FTC v. Conversion Mktg.*, No. SACV04–1264 (C.D. Cal. 2004); *FTC v. Mantra Films*, No. CV03–9184 (C.D. Cal. 2003); *FTC v. Preferred Alliance*, No. 103–CV0405 (N.D. Ga. 2003); *United States v. Prochnow*, No. 102–CV–917 (N.D. Ga. 2002); *FTC v. Ultralife Fitness, Inc.*, No. 2:08–cv–07655–DSF–PJW (C.D. Cal. 2008); *In the Matter of America Isuzu Motors*, FTC Docket No. C–3712 (1996); *FTC v. Universal Premium Services*, No. CV06–0849 (C.D. Cal. 2006); *FTC v. Remote Response*, No. 06–20168 (S.D. Fla. 2006); and *FTC's Dot Com Disclosures Guidance*.

⁸ Courts have found unauthorized billing to be unfair under the FTC Act. See, e.g., *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1157–59 (9th Cir. 2010), amended by 2010 WL 2365956 (9th Cir. June 15, 2010); *FTC v. Amazon.com, Inc.*, No. C14–1038–JCC, 2016 WL 10654030, at *8 (W.D. Wash. Apr. 26, 2016); *FTC v. Ideal Fin. Sols., Inc.*, No. 2:13–CV–

B. ROSCA

Enacted by Congress in 2010 to address ongoing problems with online negative option marketing, ROSCA contains general provisions related to disclosures, consent, and cancellation.⁹ ROSCA prohibits charging or attempting to charge consumers for goods or services sold on the internet through any negative option feature unless the marketer: (1) Clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information; (2) obtains a consumer's express informed consent before charging the consumer's account; and (3) provides simple mechanisms for the consumer to stop recurring charges.¹⁰ ROSCA, however, provides no details regarding steps marketers must follow to comply with these provisions.

ROSCA also addresses offers made by, or on behalf of, third-party sellers during, or immediately following, a transaction with an initial merchant.¹¹ In connection with these offers, ROSCA prohibits post-transaction, third-party sellers from charging or attempting to charge consumers unless the seller: (1) Before obtaining billing information, clearly and conspicuously discloses the offer's material terms; and (2) receives the consumer's express informed consent by obtaining the consumer's name, address, contact information, as well as the full account number to be charged, and requiring the consumer to perform an additional affirmative action indicating consent.¹² ROSCA also prohibits initial merchants from disclosing billing information to any post-transaction third-party seller for use in any internet-based sale of goods or services.¹³

ROSCA provides that a violation of that Act shall be treated as a violation of a Commission trade regulation rule under Section 18 of the FTC Act.¹⁴ Thus, the Commission may seek a variety of remedies for violations of ROSCA, including civil penalties under

00143–JAD, 2015 WL 4032103, at *8 (D. Nev. June 30, 2015).

⁹ 15 U.S.C. 8401–8405.

¹⁰ 15 U.S.C. 8403. ROSCA incorporates the definition of “negative option feature” from the Commission's Telemarketing Sales Rule, 16 CFR 310.2(w).

¹¹ ROSCA defines “post-transaction third-party seller” as a person other than the initial merchant who sells any good or service on the internet and solicits the purchase on the internet through an initial merchant after the consumer has initiated a transaction with the initial merchant. 15 U.S.C. 8402(d)(2).

¹² 15 U.S.C. 8402(a).

¹³ 15 U.S.C. 8402(b).

¹⁴ 15 U.S.C. 8404. Section 18 of the FTC Act is 15 U.S.C. 57a.

Section 5(m)(1)(A) of the FTC Act;¹⁵ injunctive and equitable monetary relief under Section 13(b) of the FTC Act;¹⁶ and consumer redress, damages, and other relief under Section 19 of the FTC Act.¹⁷ Although Congress charged the Commission with enforcing ROSCA, it did not specifically direct the FTC to promulgate implementing regulations.¹⁸

C. Telemarketing Sales Rule

The Telemarketing Sales Rule (“TSR”) (16 CFR part 310) prohibits deceptive telemarketing acts or practices, including those involving negative option offers, and certain types of payment methods common in deceptive marketing. The TSR only applies to negative option offers made over the telephone. Specifically, the TSR requires that telemarketers disclose all material terms and conditions of the negative option feature, including the need for affirmative consumer action to avoid the charges, the date (or dates) the charges will be submitted for payment, and the specific steps the customer must take to avoid the charges. It also prohibits telemarketers from misrepresenting such information and contains specific requirements related to payment authorization.¹⁹ The Commission recently amended the TSR to prohibit the use of payment methods often used in deceptive marketing, including negative options, such as remotely created checks.²⁰

D. Other Relevant Requirements

The Electronic Fund Transfer Act (“EFTA”) ²¹ and the Postal Reorganization Act (“PRA”) (*i.e.*, Unordered Merchandise Statute) also contain provisions that address negative option marketing.²² EFTA prohibits sellers from imposing recurring charges on a consumer's debit cards or bank accounts without written

¹⁵ 15 U.S.C. 45(m)(1)(A).

¹⁶ 15 U.S.C. 53(b).

¹⁷ 15 U.S.C. 57b(a)(1) and (b).

¹⁸ ROSCA states that a violation “of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. 15 U.S.C. 8404(a).

¹⁹ 16 CFR 310.3(a).

²⁰ 80 FR 77520 (Dec. 14, 2015). The TSR Notice of Proposed Rulemaking (78 FR 41200 (July 9, 2013)) noted negative option cases where the defendants used unauthorized remotely created checks. *E.g.*, *FTC v. FTN Promotions, Inc.*, Civ. No. 8:07–1279 (M.D. Fla. Dec. 30, 2008) (Stip. Perm. Inj.) (defendants allegedly caused more than \$171 million in unauthorized charges to consumers' accounts for bogus travel and buyers' clubs in part by using unauthorized remotely created checks).

²¹ 15 U.S.C. 1693–1693r.

²² 39 U.S.C. 3009.

authorization.²³ The PRA provides that mailing unordered merchandise, or a bill for such merchandise, constitutes an unfair method of competition and an unfair trade practice in violation of Section 5 of the FTC Act.²⁴

V. Limitations of Existing Regulatory Requirements

The existing patchwork of laws and regulations does not provide industry and consumers with a consistent legal framework across different media and types of plans. For instance, as discussed above, the current Rule does not cover common practices such as continuity plans, automatic renewals, and trial conversions.²⁵ In addition, ROSCA and the TSR do not address negative option plans in all media—ROSCA's general statutory prohibitions on deceptive negative option marketing only apply to internet sales, and the TSR's more specific provisions only apply to telemarketing. Furthermore, harmful negative option practices that fall outside of ROSCA and the TSR's coverage still occur.²⁶ Therefore, under the current framework, different rules apply depending on whether a negative option offer is made online, over the phone, or in some other medium (e.g., in print, through the mail, etc.).

Additionally, the current framework does not provide clarity about how to avoid deceptive negative option disclosures and procedures. For example, ROSCA lacks specificity about cancellation procedures and the placement, content, and timing of cancellation-related disclosures. Instead, the statute requires marketers to provide a "simple mechanism" for the

consumer to stop recurring charges, but does not specify what methods would satisfy this requirement.

VI. Past FTC Rulemaking Efforts

The Commission initiated its last regulatory review of the Negative Option Rule in 2009 (74 FR 22720 (May 14, 2009)), following a 2007 FTC workshop and subsequent Staff Report.²⁷ The Commission completed the review in 2014 (79 FR 44271 (July 31, 2014)). At the time, the Commission found the comments supporting the Rule's expansion "argue convincingly that unfair, deceptive, and otherwise problematic negative option marketing practices continue to cause substantial consumer injury, despite determined enforcement efforts by the Commission and other law enforcement agencies."²⁸ It also noted that practices not covered by the Rule (e.g., trial conversions and continuity plans) accounted for most of its enforcement activity in this area. Despite these findings, the Commission declined to expand or enhance the Rule, concluding that amendments were not warranted because the enforcement tools provided by the TSR and, especially, ROSCA, which had only recently become effective, might prove adequate to address the persistent problems generated by deceptive and unfair negative option marketing. However, the Commission also explained that, if ROSCA and its other enforcement tools do not adequately protect consumers, the Commission could consider, based on a more complete record, whether and how to amend the Rule.²⁹

VII. Ongoing Problems With Negative Option Marketing

Since the conclusion of the last regulatory review of the Negative Option Rule, evidence strongly suggests that negative option marketing continues to harm consumers. The Commission and the states continue to regularly bring cases challenging negative option practices, including more than 20 recent FTC cases. These matters involved a range of deceptive and unfair practices, including inadequate disclosures for "free" offers and other products or programs, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures.³⁰ In addition, the Commission continues to receive thousands of complaints each year related to negative option marketing. The recent cases and the high volume of ongoing complaints suggests there is prevalent, unabated consumer harm in the marketplace. As discussed below, the Commission seeks comments on these issues.

VIII. Request for Comments

The Commission seeks comments on the current Rule as well as possible regulatory measures to reduce consumer harm created by deceptive or unfair negative option marketing. In considering ways to meet this objective, as detailed below, the Commission seeks comment on various alternatives, including amendments to existing rules to further address disclosures, consumer consent, and cancellation. In particular, the Commission requests input on whether and how it should use its authority under Section 18 of the FTC Act to expand the Negative Option Rule to address prevalent unfair or deceptive practices involving negative option marketing.³¹ It also seeks comment on

²³ EFTA provides that the Commission shall enforce its requirements, except to the extent that enforcement is specifically committed to some other federal government agency, and that a violation of any of its requirements shall be deemed a violation of the FTC Act. Accordingly, the Commission has authority to seek the same injunctive and monetary equitable relief for EFTA violations that it can seek for other Section 5 violations.

²⁴ The Commission has authority to seek the same remedies for PRA violations that it can seek for other Section 5 violations. For example, the Commission can seek civil penalties pursuant to Section 5(m)(1)(B) of the FTC Act from violators who have actual knowledge that the Commission has found mailing unordered merchandise unfair.

²⁵ Indeed, the prenotification plans covered by the Rule represent only a small fraction of negative option marketing. In 2017, for instance, the Commission estimated that fewer than 100 sellers ("clubs") were subject to the current Rule's requirements. 82 FR 38907, 38908 (Aug. 16, 2017).

²⁶ For instance, the Commission recently brought two cases under Section 5 involving negative option plans that did not involve either internet sales or telemarketing. *FTC and State of Maine v. Health Research Laboratories, LLC*, No. 2:17-cv-00467-JDL (D. Me. 2018); and *FTC and State of Maine v. Marketing Architects*, No. 2:18-cv-00050 (D. Me. 2018).

²⁷ See *Negative Options: A Report By the Staff of the FTC's Division of Enforcement* 26–29, <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>.

²⁸ The Commission cited a number of its law enforcement actions challenging negative option marketing practices, including, for example, *FTC v. Process America, Inc.*, No. 14–0386–PSG–VBKx (C.D. Cal. 2014) (processing of unauthorized charges relating to negative option marketing); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011) (internet free trials and continuity plans); *FTC v. MoneyMaker*, No. 2:11-cv-00461–JCM–RJJ (D. Nev. 2012) (internet trial offers and continuity programs); *FTC v. Johnson*, No. 2:10-cv-02203–RLH–GWF (D. Nev. 2010), (internet trial offers); and *FTC v. John Beck Amazing Profits, LLC*, No. 2:09-cv-04719 (C.D. Cal. 2009) (infomercial and telemarketing trial offers and continuity programs); see also "An Overview of the FTC's Enforcement Actions Concerning Negative Option Marketing," a presentation delivered during the Commission's 2007 "Negative Options: An FTC Workshop Analyzing Negative Option Marketing," <https://www.ftc.gov/news-events/events-calendar/2007/01/negative-options-workshop-analyzing-negative-option-marketing>.

²⁹ 79 FR at 44276.

³⁰ Examples of these matters include: *FTC v. Credit Bureau Center, LLC*, No. 17–cv–00194 (N.D. Ill. 2018); *FTC v. JDI Dating, Ltd.*, No. 1:14-cv-08400 (N.D. Ill. 2018); *FTC, State of Illinois, and State of Ohio v. One Technologies, LP*, No. 3:14-cv-05066 (N.D. Cal. 2014); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649–RFB–GWF (D. Nev. 2016); *FTC v. Nutraclick LLC*, No. 2:16-cv-06819–DMG (C.D. Cal. 2016); *FTC v. XXL Impressions*, No. 1:17-cv-00067–NT (D. Me. 2018); *FTC v. AAFE Products Corporation*, NO. 3:17-cv-00575 (S.D. Cal. 2017); *FTC v. Pact Inc.*, No. 2:17-cv-1429 (W.D. Wash. 2017); *FTC v. Tarr*, No. 3:17-cv-02024–LAB–KSC (S.D. Cal. 2017); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017); *FTC v. DOTAuthority.com, Inc.*, No. 0:16-cv-62186–WJZ (S.D. Fla. 2018); *FTC v. Bunzai Media Group, Inc.*, No. CV15–04527–GW(PLAx) (C.D. Cal. 2018); and *FTC v. RevMountain, LLC*, No. 2:17-cv-02000–APG–GWF (D. Nev. 2018).

³¹ Section 202 of the Magnuson-Moss Warranty-FTC Improvements Act authorizes the Commission to promulgate rules that define with specificity acts or practices in or affecting commerce which are unfair or deceptive. FTC Act Section 18(a)(1)(B) (15

other approaches, such as the publication of additional consumer and business education. The Commission seeks any suggestions or alternative methods for improving current requirements. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

General Questions About the Current Rule

(1) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What, if any, impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? What evidence supports the asserted impact?

(5) What, if any, significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

(6) Are any of the Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.

(7) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(8) What modifications, if any, should the Commission make to the Rule to increase its benefits to businesses, particularly small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(9) What, if any, significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(10) What modifications, if any, should the Commission make to the Rule to reduce the costs imposed on businesses, particularly small businesses?

(11) Should the Rule define "clearly and conspicuously," given that it requires marketers to make certain disclosures clearly and conspicuously? If so, why, and how? If not, why not?

(12) What evidence is available concerning the degree of compliance with the Rule? Does this evidence indicate that the Commission should modify the Rule? If so, why, and how? If not, why not?

(13) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Should the Rule be modified to address any such overlaps or conflicts? If so, why, and how? If not, why not? Please provide supporting evidence.

Questions About Negative Option Practices and the Existing Legal Framework

(14) How widespread is the marketing of products or services through negative option plans, including, but not limited to, plans covered by the current Rule? What percentage of these negative option plans are offered through the internet, telemarketing, the mail, or through some other means? What data sources did you rely upon in formulating your answer?

(15) Are there potentially unfair or deceptive practices concerning the marketing of negative option plans, not covered by the Rule, occurring in the marketplace? If so, what types of negative option plans does such marketing involve? What evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrates whether there is widespread existence of such practices? Please provide this evidence.

(16) Does current marketing of negative option plans cause consumer injury? If so, what evidence demonstrates that such practices cause consumer injury do so? Please provide this evidence.

(17) Please provide any evidence that has become available over the last several years concerning consumer perception of, or experience with, negative option offers, including offers for prenotification negative option

plans, continuity plans, trial conversions, or automatic renewals.

(18) How do the existing laws and regulations covering negative options affect consumers? What evidence supports your answer?

(19) Do existing laws and regulations covering negative options affect businesses, particularly small businesses? If so, how? What evidence supports your answer?

(20) Is there a need for new regulatory provisions to prevent deception by addressing negative option plans not covered by the Rule? If yes, why? If no, why not? If new regulations are needed to address the marketing of negative option plans not covered by the existing Rule, should the Rule be amended, or should a new Rule or Rules be created? Should all forms of negative option marketing be addressed in a single Rule or by new, separate Rules? What evidence supports your answer? What are the benefits and costs to consumers and businesses under either approach? What evidence supports your answer?

(21) If new regulatory provisions are necessary, should they treat various types of negative option marketing differently? Why or why not? Would there be any adverse consequences if different forms of negative option marketing were addressed under separate Rules? Why or why not? What, if any, evidence supports your answer?

(22) What specific modifications, if any, should be added to the Rule to better address prenotification negative option marketing, continuity plans, trial conversions, and/or automatic renewals? What evidence supports your proposed modification?

(23) Do current or impending changes in technology or market practices affect whether and how the Rule should be modified? If so, what are such changes and how do they affect whether the Rule should be modified?

(24) Are there foreign or international laws, regulations, or standards addressing negative option plans that the Commission should consider as it reviews the Rule? If so, what are they? Should the Commission consider adopting, or avoiding, any of these? If so, why? If not, why not?

(a) Should the Rule be modified to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(25) Should the Commission consider additional consumer and business education to reduce consumer harm associated with negative option

U.S.C. 57a(a)(1)(B). Under FTC Act Section 18(b)(3), the Commission may issue regulations "where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent." The Commission may make such a prevalence finding if it has issued cease and desist orders regarding such acts or practices, or any other available information indicates a widespread pattern of unfair or deceptive acts or practices. Rules under Section 18 "may include requirements prescribed for the purpose of preventing such acts or practices."

marketing? If so, what should such education materials include, and how should the Commission communicate that information to consumers and businesses?

IX. Comment Submissions

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before December 2, 2019. Write “Negative Option Rule (16 CFR part 425) (Project No. P064202)” on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form provided. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the [regulations.gov](https://www.regulations.gov) site.

If you file your comment on paper, write “Negative Option Rule (16 CFR part 425) (Project No. P064202)” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical

records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 2, 2019. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–21265 Filed 10–1–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104223–18]

RIN 1545–B052

Ownership Attribution Under Section 958 Including for Purposes of Determining Status as Controlled Foreign Corporation or United States Shareholder

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the modification of section 958(b) of the Internal Revenue Code (“Code”) by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. The proposed regulations affect United States persons that have ownership interests in or that make or receive payments to or from certain foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by December 2, 2019.

ADDRESSES: Send electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–104223–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the “Treasury Department”) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–104223–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–104223–18), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jorge M. Oben, (202) 317–6934; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 958 provides rules for determining direct, indirect, and constructive stock ownership. Under section 958(a)(1), stock is considered owned by a person if it is owned directly or is owned indirectly through certain foreign entities under section 958(a)(2). Under section 958(b), section 318 applies, with certain modifications, to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b) (“U.S. shareholder”) of a foreign corporation, to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a U.S. shareholder of a controlled foreign corporation (“CFC”) for purposes of section 956(c)(2), or to treat a foreign corporation as a CFC under section 957.

Section 318 provides rules that attribute the ownership of stock to certain family members, between certain entities and their owners, and to holders of options to acquire stock. Section 318(a)(1) provides rules attributing stock ownership among members of a family. Section 318(a)(2) provides rules attributing stock ownership from partnerships, estates, trusts, and corporations to partners, beneficiaries, owners, and shareholders (so-called “upward attribution”). Section 318(a)(3) generally attributes stock owned by a person to a partnership, estate, trust, or corporation in which the person has an interest (so-called “downward attribution”). In particular, section 318(a)(3)(A) provides that stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate is considered as owned by the partnership or estate. This provision applies to all partners and beneficiaries without regard to the size of their interest in the partnership or estate. Section 318(a)(3)(B) similarly provides, subject to certain exceptions, that stock owned, directly or indirectly, by or for a beneficiary of a trust (or a person who is considered an owner of a trust) is considered owned by the trust. Section 318(a)(3)(C) provides that stock in one corporation owned, directly or indirectly, by or for a shareholder in a second corporation is considered owned by the second corporation if 50 percent or more in value of the stock in the second corporation is owned, directly or indirectly, by such shareholder.

As in effect before repeal, section 958(b)(4) provided that subparagraphs (A), (B), and (C) of section 318(a)(3) (providing for downward attribution) were not to be applied so as to consider a United States person as owning stock

owned by a person who is not a United States person (a “foreign person”). Effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of the foreign corporations, and for the taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporations end, section 958(b)(4) was repealed by section 14213 of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the “Act”). As a result of this repeal, stock of a foreign corporation owned by a foreign person can be attributed to a United States person under section 318(a)(3) for purposes of determining whether a United States person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a CFC. In other words, as a result of the repeal of section 958(b)(4), section 958(b) now provides for downward attribution from a foreign person to a United States person in circumstances in which section 958(b), before the Act, did not so provide. As a result, United States persons that were not previously treated as U.S. shareholders may be treated as U.S. shareholders, and foreign corporations that were not previously treated as CFCs may be treated as CFCs.

The legislative history to the Act indicates that the repeal of section 958(b)(4) was intended “to render ineffective certain transactions that are used to [sic] as a means of avoiding the subpart F provisions.” See H.R. Rep. No. 115–466, at 633 (2017) (Conf. Rep.). It further provides:

One such transaction involves effectuating “de-control” of a foreign subsidiary, by taking advantage of the section 958(b)(4) rule that effectively turns off the constructive stock ownership rules of 318(a)(3) when to do otherwise would result in a U.S. person being treated as owning stock owned by a foreign person. Such a transaction converts former CFCs to non-CFCs, despite continuous ownership by U.S. shareholders.

Id. at 633–34.

Explanation of Provisions

I. Changes in Connection With Repeal of Section 958(b)(4)

This notice of proposed rulemaking proposes changes that are generally intended to ensure that the operation of certain rules is consistent with their application before the Act’s repeal of section 958(b)(4), as further explained in this Part I. Other guidance that provides relief concerning the effect of the repeal of section 958(b)(4) on the application of subpart F more generally is provided separately.

A. Section 267: Deduction for Certain Payments to Foreign Related Persons

Section 267(a)(2) provides a matching rule that governs the time at which an otherwise deductible amount owed to a related person may be deducted. Specifically, section 267(a)(2) provides that, in the case of certain interest and expenses paid by the taxpayer to a related person, if an amount is not includible in the payee’s gross income until it is paid, the amount generally is not allowable as a deduction to the taxpayer until the amount is includible in the gross income of the payee.

Section 267(a)(3)(A) provides that the Secretary shall by regulations apply the matching principle in section 267(a)(2) in cases in which the payee is a foreign person. Section 1.267(a)–3(b) generally requires a taxpayer to use the cash method of accounting for deductions of amounts owed to a related foreign person. An exemption is provided in § 1.267(a)–3(c)(2) for any amount, other than interest, that is income of a related foreign person with respect to which the related foreign person is exempt from U.S. tax on the amount owed pursuant to a treaty obligation of the United States.

Section 841(b) of Public Law 108–357 (2004) added section 267(a)(3)(B) to the Code, effective for payments accrued on or after October 22, 2004. Section 267(a)(3)(B)(i) provides that, notwithstanding section 267(a)(3)(A), in the case of any item payable to a CFC, a deduction is allowable to the payor with respect to the amount for any taxable year before the year in which paid only to the extent that an amount attributable to the item is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation. Section 267(a)(3)(B)(ii) grants the Secretary the authority to issue regulations exempting transactions from section 267(a)(3)(B)(i).

For amounts accrued on or after October 22, 2004, a taxpayer that owes an amount to a CFC cannot rely on the exemption in § 1.267(a)–3(c)(2) to generally deduct the amount when accrued, and instead can deduct the amount prior to the year the amount is paid only to the extent that an amount attributable to the item is includible in gross income of a U.S. shareholder that owns (within the meaning of section 958(a)) stock in the CFC. After the repeal of section 958(b)(4), a CFC may not have any U.S. shareholders that own stock within the meaning of section 958(a) (“section 958(a) U.S. shareholders”). Because the repeal of

section 958(b)(4) is effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent taxable year of the foreign corporations, and for the taxable year of U.S. shareholders in which or with which such taxable year of the foreign corporations end, a taxpayer may have, in 2017, deducted an amount accrued in 2017 that, due to the repeal of section 958(b)(4), would no longer be allowable in 2017.

The purpose of the matching principle in section 267(a)(2) is to align the timing of a deduction with the inclusion of the item in income. If an amount is owed to a CFC that has no section 958(a) U.S. shareholders that would include an amount attributable to the item in income, and the CFC is exempt from U.S. tax on the amount owed due to a treaty, it is unnecessary to not allow a taxpayer to take the deduction when the amount is accrued. Accordingly, the proposed regulations provide that an amount (other than interest) that is income of a related foreign person with respect to which the related foreign person is exempt from U.S. taxation on the amount owed pursuant to a treaty obligation of the United States is exempt from the application of section 267(a)(3)(B)(i) if the related foreign person is a CFC that does not have any section 958(a) U.S. shareholders. Proposed § 1.267(a)–3(c)(4).

These proposed regulations also amend § 1.267(a)–3(c)(2) and remove the rules currently in § 1.267(a)–3(c)(4), in order to reflect the changes to section 267 in Public Law 108–357. The Treasury Department and the IRS intend to update other provisions in § 1.267(a)–3 to take into account the changes made to section 267(a)(3) by Public Law 108–357 in future guidance.

B. Section 332: Liquidation of Applicable Holding Company

Section 332(a) provides a general rule that no gain or loss is recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation. Section 332(d) was enacted to disallow the nonrecognition of gain to a foreign corporation through the complete liquidation of certain domestic holding companies, which could avoid the imposition of withholding tax that would otherwise apply to a section 301 distribution from these holding companies. *See* H.R. Rep. No. 108–755, at 761–62 (2004) (Conf. Rep.). Section 332(d)(1) provides an exception to sections 332(a) and 331 for certain distributions by domestic corporations to foreign corporations. Section 332(d)(1) results in the

recognition by a foreign corporation of income from the liquidation of certain domestic holding companies by treating the liquidating distribution as a distribution under section 301. Specifically, section 332(d)(1) provides that section 301, and not section 332(a) nor 331, applies to a distribution to a foreign corporation in complete liquidation of an applicable holding company (as defined in section 332(d)(2)). Section 332(d)(3) provides that, notwithstanding section 332(d)(1), exchange treatment under section 331 applies if the distributee of a distribution in complete liquidation of an applicable holding company is a CFC. In such a case, the gain on the distribution could be foreign personal holding company income (“FPHCI”) under section 954(c)(1)(B), and before the Act, CFCs generally had U.S. shareholders that would be subject to tax on their pro rata share of such gain under section 951(a).

Section 332(d)(4) grants the Secretary the authority to issue regulations as appropriate to prevent the abuse of section 332(d). The repeal of section 958(b)(4) broadened the application of section 332(d)(3) to foreign corporations that are CFCs because of downward attribution from a foreign person. This result could lead to inappropriate results because any gain recognized on an exchange of stock of an applicable holding company under section 331 by a foreign corporation that is a CFC due to downward attribution from a foreign person could avoid U.S. tax if the CFC does not have U.S. shareholders that have current income inclusions under section 951(a). Therefore, in accordance with the regulatory authority provided in section 332(d)(4), the proposed regulations modify the definition of a CFC (so as to use the definition of a CFC in effect immediately before the repeal of section 958(b)(4)) for purposes of applying section 332(d)(3). *See* proposed § 1.332–8(a). The Treasury Department and the IRS request comments on these proposed changes to the definition of a CFC for the purposes of applying section 332(d)(3).

C. Section 367(a): Triggering Events Exception for Other Dispositions or Events Under § 1.367(a)–8(k)(14)

Section 367(a)(1) provides that if, in connection with an exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, the foreign corporation is not treated as a corporation for purposes of determining the extent to which gain is recognized on the transfer. Section 367(a)(1) does not apply, however, to certain transfers

of stock or securities of a foreign corporation (including an indirect stock transfer) by a United States person (“U.S. transferor”) if the U.S. transferor enters into a gain recognition agreement (“GRA”) with respect to the transferred stock or securities. *See* § 1.367(a)–3(b)(1). In general, a U.S. transferor subject to a GRA must recognize gain if a triggering event (as defined in § 1.367(a)–8(j)) occurs during the term of a GRA. *See* § 1.367(a)–8(j). Section 1.367(a)–8(k) provides several exceptions for certain dispositions that constitute nonrecognition transactions if, immediately after the disposition, the U.S. transferor meets certain requirements. In particular, § 1.367(a)–8(k)(14) generally provides that a disposition or other event is not a triggering event if the disposition or other event qualifies as a nonrecognition transaction, and, immediately after the disposition or other event, the U.S. transferor retains a direct or indirect interest in the transferred stock or securities or, as applicable, in substantially all of the assets of the transferred corporation. The rule further provides that if a foreign corporation acquires the transferred stock or securities or, as applicable, substantially all of the assets of the transferred corporation, the exception applies only if the U.S. transferor owns at least five percent (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and the total value of the outstanding stock of such foreign corporation. This five-percent ownership condition is intended to limit the application of the general exception to transactions in which the U.S. transferor retains at least a minimal interest in the transferred stock or securities (or substantially all the assets of the transferred corporation). *See* TD 9446, 74 FR 6952, 6953 (February 11, 2009).

The exception described in the preceding paragraph was added when section 958(b)(4) did not allow for downward attribution from foreign persons. A U.S. transferor that would not have been eligible for the exception because it held a less than five percent interest in the transferred stock or securities (or substantially all the assets of the transferred corporation) could now be eligible for the exception if the U.S. transferor holds at least five percent due to downward attribution of stock owned by a foreign person. A U.S. transferor’s constructive ownership interest should not include an interest that is treated as owned as a result of downward attribution from a foreign person as it would inappropriately treat

the U.S. transferor as owning an interest it would not have owned under the rules in effect when § 1.367(a)–8(k)(14) was added. Therefore, in accordance with the regulatory authority provided in section 367(a), the proposed regulations revise § 1.367(a)–8(k)(14) to apply section 958(b) without regard to the repeal of section 958(b)(4). See proposed § 1.367(a)–8(k)(14)(ii). The Treasury Department and the IRS request comments on these proposed revisions to § 1.367(a)–8(k)(14).

D. Section 672: CFC's Ownership of a Trust

Section 672(f)(1) generally provides that the grantor trust rules in sections 671 through 679 apply only to the extent they result in income being currently taken into account (either directly or through one or more entities) by a citizen or resident of the United States or a domestic corporation. To the extent that a trust or a portion thereof is not taxed as a grantor trust, the trust and its beneficiaries are taxable in accordance with the rules of sections 641 through 669. In the case of a foreign nongrantor trust, accumulation distributions are not only taxable to U.S. beneficiaries, but also subject to the “throwback rules” of sections 665 through 668.

Section 672(f)(3)(A) provides special rules, however, for a trust that is treated as owned by a CFC. Except as otherwise provided by regulations, CFCs are treated as domestic corporations for purposes of section 672(f)(1). Section 672(f)(3)(A). Before the repeal of section 958(b)(4), the portion of a trust's income that was treated as owned by a CFC would generally have been taxable currently to the U.S. shareholders to the extent the trust's income constituted subpart F income of the CFC.

After the repeal of section 958(b)(4), however, a CFC may have no U.S. shareholders that would be subject to tax on their pro rata share of its subpart F income under section 951(a). A CFC could be formed to facilitate tax-free accumulation of income in a trust for the benefit of United States persons and result in tax-free distributions from the trust to the U.S. beneficiaries. In such a case, none of the income or gain of the grantor trust would be taken into account by U.S. shareholders, despite constituting subpart F income, while distributions of income from the trust to its U.S. beneficiaries would not be subject to tax, and the throwback rules would be avoided entirely.

Therefore, the proposed regulations, in accordance with the regulatory authority provided in section 672(f)(3), provide that the only CFCs taken into

account for purposes of section 672(f) are those that are CFCs without regard to downward attribution from foreign persons. See proposed § 1.672(f)–2(a). A reference to foreign personal holding companies in § 1.672(f)–2(a) is also deleted, consistent with the repeal of the foreign personal holding company regime by section 413(a) of the American Jobs Creation Act of 2004, Public Law 108–357. *Id.* The Treasury Department and the IRS request comments on these proposed revisions to § 1.672(f)–2(a).

E. Section 706: Taxable Year of Partnership

Section 706 provides rules for determining the taxable year of a partnership and its partners. Section 1.706–1(b)(6)(i) provides that in determining the taxable year of a partnership under section 706(b) and the regulations thereunder, any interest held by a disregarded foreign partner is not taken into account. A foreign partner is a disregarded foreign partner unless the foreign partner is allocated any gross income of the partnership that was effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States (“effectively connected income”) during the partnership's taxable year immediately preceding the current taxable year (or, if such partner was not a partner during the partnership's immediately preceding taxable year, the partnership reasonably believes that the partner will be allocated any such income during the current taxable year) and taxation of that income is not otherwise precluded under any U.S. income tax treaty. For purposes of these rules, § 1.706–1(b)(6)(ii) defines a foreign partner as a partner that is not a United States person (as defined in section 7701(a)(30)), but provides that CFCs are not treated as foreign partners. When § 1.706–1(b)(6)(ii) was added, CFCs were not treated as foreign partners for purposes of determining a partnership's taxable year under section 706 because the U.S. owners of such entities were subject to U.S. federal income taxation on a current basis with respect to certain income earned by these entities. See 66 FR 3920, 3921 (January 17, 2001). As a result of the repeal of section 958(b)(4), a foreign corporation that is a CFC solely by reason of downward attribution from a foreign person may now be taken into account for purposes of determining the taxable year of such partnership. This would include a foreign corporation that is a CFC even if the CFC does not have a U.S. shareholder who owns stock of the foreign corporation within the

meaning of section 958(a) and is required to include amounts in income under section 951(a). Accordingly, the proposed regulations exclude from the definition of foreign partner only CFCs with respect to which a U.S. shareholder owns stock within the meaning of section 958(a) for purposes of determining a partnership taxable year. See proposed § 1.706–1(b)(6)(ii). As in proposed § 1.672(f)–2(a), discussed in Part I.D of this Explanation of Provisions, the reference to foreign personal holding companies is also deleted. See *id.* The Treasury Department and the IRS request comments on these proposed revisions to § 1.706–1(b)(6)(ii).

F. Section 863: Space and Ocean Income and International Communications Income of a CFC

Section 863 and the regulations thereunder provide rules for determining the source of certain items of gross income, including gross income from space and ocean activities and international communications income. Section 863(d)(1) provides that, except as provided in regulations, any income derived from a space or ocean activity (“space and ocean income”) by a United States person is sourced in the United States (“U.S. source income”) and that any space and ocean income derived by a foreign person is sourced outside the United States (“foreign source income”). Regulations under section 863(d) include an exception from the statutory provision regarding space and ocean income derived by a foreign person if the foreign person is a CFC. Specifically, space and ocean income derived by a CFC is treated as U.S. source income, except to the extent that the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country. See § 1.863–8(b)(2)(ii).

In the case of any United States person, 50 percent of any international communications income (as defined in section 863(e)(2)) is treated as U.S. source income and 50 percent of such income is treated as foreign source income. Section 863(e)(1)(A). Subject to certain exceptions, including exceptions set forth in regulations, international communications income derived by a foreign person is treated as foreign source income. Section 863(e)(1)(B)(i). Regulations under section 863(e) provide that international communications income derived by a CFC is treated as one-half U.S. source income and one-half foreign source income. See § 1.863–9(b)(2)(ii).

The status of the recipient of space and ocean income and international communications income as a CFC solely by reason of the repeal of section 958(b)(4) should not cause all or part of such income to be U.S. source income if it would not have been treated as such otherwise. Accordingly, in accordance with the regulatory authority provided in section 863(d)(1) and (e)(1)(B)(i), and consistent with the temporary relief announced in section 5.01 of Notice 2018-13, 2018-6 I.R.B. 341, these proposed regulations provide that whether a foreign corporation is a CFC for purposes of the rules under sections 863(d) and (e) treating space and ocean income and international communications income as U.S. source income in whole or in part is determined without regard to downward attribution from a foreign person. See proposed §§ 1.863-8(b)(2)(ii) and 1.863-9(b)(2)(ii).

G. Section 904: Look-Through Rules and Active Rents and Royalties Exception to Categorization as Passive Category Income

In general, section 904(a) limits the amount of foreign income taxes that a taxpayer, including a U.S. shareholder, may claim as a credit against its U.S. income tax based on the taxpayer's foreign source income. Section 904(d) further limits the credit by category of foreign source income, with general category and passive category being two common categories of income. Passive category income includes passive income, which means income that would be FPHCI if the recipient were a CFC. This generally includes dividends, interest, rents, and royalties. See section 904(d)(2)(B)(i) and 954(c)(1)(A). However, if such amounts are received or accrued by a U.S. shareholder of a CFC from the CFC, the amounts are treated as passive category income only to the extent they are allocable to passive category income of the CFC (the "CFC look-through rule"). See section 904(d)(3). Application of the CFC look-through rule requires determining the category of income of the CFC to which the dividends, interest, rents, or royalties paid to the U.S. shareholder (or other related look-through entity) are allocable.

Rents and royalties received by a CFC are generally passive category income unless the income is derived in the active conduct of a trade or business (the "section 904 active rents and royalties exception"), taking into account activities of affiliated group members. See § 1.904-4(b)(2)(iii). The section 904 active rents and royalties exception applies both for determining

the category to which a U.S. shareholder's inclusion under section 951(a) attributable to the receipt of rents and royalties by a CFC is assigned under section 904(d)(3)(B), and for purposes of applying the CFC look-through rule to determine the category to which dividends, interest, rents, and royalties paid or accrued by the CFC are allocable under section 904(d)(3)(C) and (D).

Financial services income received by certain CFCs or a domestic corporation is treated as general category income (the "financial services income rule"). See section 904(d)(2)(C)(i). In determining whether income is financial services income for purposes of section 904, the activities of affiliated group members, including CFCs, are taken into account to determine whether such entities are financial services entities (the "financial services entity requirement"). See section 904(d)(2)(C)(ii) and § 1.904-4(e)(3)(ii).

The formulation of the CFC look-through rule and the affiliated group rules in both the section 904 active rents and royalties exception and the financial services income rules was premised on the assumption that income of CFCs (including affiliated group members meeting the active conduct requirement or the financial services entity requirement) would be subject to U.S. tax under section 951(a) or on a distribution of earnings and profits generated by such income, and that foreign corporations to which the rules applied would be directly or indirectly controlled by United States persons able to obtain information concerning their activities, income, and expenses. See H.R. Rep. No. 99-841, Volume II, at 566 and 573-574 (1986) (Conf. Rep.); see also T.D. 8412, 57 FR 20639, 20640 (May 14, 1992); *id.* at 20641; and 66 FR 319, 321 (January 3, 2001). Treating foreign corporations as CFCs or United States persons as U.S. shareholders by reason of downward attribution from foreign persons for purposes of the CFC look-through rule and the affiliated group rules would be inconsistent with the intended scope of the rules. Before the repeal of section 958(b)(4), a U.S. shareholder of a foreign corporation in which U.S. shareholders held directly or indirectly at least 10 percent, but not more than 50 percent, of the voting stock or value, would be eligible to treat dividends, but not interest, rents, and royalties, as other than passive category income. See section 904(d)(4). Similarly, under the affiliated group rules, neither the active conduct requirement in the section 904 active rents and royalties exception nor the financial services entity requirement in the financial services income rule

could be satisfied by a foreign corporation that would be a CFC only by reason of downward attribution from a foreign person.

Accordingly, in accordance with the regulatory authority provided in section 904(d)(7), the regulations under section 904 are revised to limit the application of the affiliated group rules in the section 904 active rents and royalties exception and the financial services income rule, as well as the CFC look-through rule, to foreign corporations that are CFCs without regard to downward attribution from foreign persons. Further, the CFC look-through rule, as proposed to be revised at 83 FR 63200 (December 7, 2018), is further revised to apply only to U.S. shareholders that are U.S. shareholders without regard to downward attribution from foreign persons. See proposed § 1.904-5(a)(4)(i) and (vi) (providing definitions that apply for purposes of §§ 1.904-4 and 1.904-5, pursuant to §§ 1.904-4(a) and 1.904-5(a)(4) as proposed to be revised at 83 FR 63200 (December 7, 2018)). The Treasury Department and the IRS request comments on these proposed revisions to the regulations under section 904.

H. Section 958: Rules for Determining Stock Ownership

To ensure that the regulations under section 958 are consistent with the amended statute, this notice of proposed rulemaking removes the rule in § 1.958-2(d)(2) that corresponds to section 958(b)(4). It also revises *Example 4* in § 1.958-2(g) to illustrate the application of the ownership attribution rules in section 958 in the absence of section 958(b)(4).

I. Section 1297: PFIC Asset Test

Section 1297(e) provides the rules used to measure a foreign corporation's assets for purposes of determining whether it meets the asset test in section 1297(a)(2) and is a passive foreign investment company ("PFIC"). If the foreign corporation is a CFC and is not a publicly traded corporation, when determining whether the average percentage of assets of the corporation that produce passive income is at least 50 percent, adjusted basis (rather than value) of the assets must be used. Section 1297(e)(2). Accordingly, shareholders of a foreign corporation that became a CFC as a result of the repeal of section 958(b)(4) will have to determine whether the average percentage of assets that produce passive income is at least 50 percent using adjusted basis.

The legislative history to section 1297(e) indicates that the adjusted basis

requirement for CFCs exists because “measurement by adjusted basis is well established in the case of controlled foreign corporations’ investments of earnings in U.S. property, and is highly appropriate to the task of measuring the earnings of a controlled foreign corporation that are invested in excess passive assets.” H.R. Rep. No. 103–111, at 692 (1993). However, the rule imposes a burden on taxpayers that own stock in foreign corporations that became CFCs solely by reason of the repeal of section 958(b)(4), which may not otherwise be required to account for the basis in assets under U.S. federal income tax rules. Section 1298(g) grants the Secretary the authority to issue regulations that are necessary and appropriate to carry out the purposes of sections 1291 through 1298. In accordance with this authority, the proposed regulations modify the definition of a CFC for purposes of section 1297(e) to disregard downward attribution from foreign persons. See proposed § 1.1297–1(d)(1)(iii)(A).

J. Section 6049: Chapter 61 Reporting Provisions

Generally, under chapter 61 of subtitle F of the Code, a payor must report to the IRS (using the appropriate Form 1099) certain payments or transactions with respect to United States persons that are not exempt recipients. The regulations under chapter 61 generally provide that the scope of payments or transactions subject to reporting under chapter 61 depends, in part, on whether or not the payor is a U.S. payor (as defined in § 1.6049–5(c)(5)), which generally includes United States persons and their foreign branches, as well as CFCs.

Foreign corporations that became CFCs solely as a result of the repeal of section 958(b)(4) could be subject to an increased burden from the reporting requirements under chapter 61 (and the backup withholding rules under section 3406). To mitigate the increased Form 1099 reporting by foreign corporations that may have no direct or indirect owners that are United States persons, in accordance with the regulatory authority provided in section 6049(a), proposed § 1.6049–5(c)(5)(i)(C) provides that a U.S. payor includes only a CFC that is a CFC without regard to downward attribution from a foreign person.

II. Applicability Dates

These regulations are generally proposed to apply on or after October 1, 2019. See section 7805(b)(1)(B). For taxable years before taxable years covered by the regulations, a taxpayer

may generally apply the rules set forth in the final regulations to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply the relevant rule with respect to all foreign corporations. See section 7805(b)(7). Moreover, although proposed § 1.958–2 is proposed to apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end, the same result as the proposed revisions applies before such date due to the effective date of the repeal of section 958(b)(4).

A taxpayer may rely on the proposed regulations with respect to any period before the date that these regulations are published as final regulations in the **Federal Register**.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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. The Treasury Department requests comment and any potential data regarding the expected impacts of this proposed regulation.

This regulation is subject to review under section 6(b) of Executive Order 12866 pursuant to the April 11, 2018, Memorandum of Agreement (“April 11, 2018 MOA”) between the Treasury

Department and the Office of Management and Budget (“OMB”) regarding review of tax regulations. The Acting Administrator of the Office of Information and Regulatory Affairs (“OIRA”), OMB, has waived review of this proposed rule in accordance with section 6(a)(3)(A) of Executive Order 12866. OIRA will subsequently make a significance determination of the final rule under the terms of item 1 of the April 11, 2018 MOA between the Treasury Department and OMB regarding review of tax regulations.

A. Background

Section 14213 of the Act repealed section 958(b)(4), effective beginning with the last taxable year of a foreign corporation that begins before January 1, 2018 (and taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end). The repeal of section 958(b)(4) by the Act modified the constructive ownership rules that determine whether a foreign corporation is a CFC and whether a U.S. person is a U.S. shareholder of a CFC. Under section 318(a)(3), stock owned by a person is attributed downward to (that is, considered to be owned by) a partnership, estate, trust, or corporation in which the person owns an interest. Prior to repeal, section 958(b)(4) limited the application of section 318(a)(3) for purposes of determining whether a foreign corporation is a CFC and whether a U.S. person is a U.S. shareholder by providing that downward attribution under section 318(a)(3) was not applied so as to consider a U.S. person as owning the stock owned by a foreign person. After the repeal of section 958(b)(4), such stock owned by a foreign person can be attributed downward to a U.S. person, for example, to a U.S. subsidiary of a foreign parent. As a result, additional foreign corporations are now CFCs, and U.S. persons are now U.S. shareholders of CFCs, even in cases where the foreign corporation has no or little U.S. ownership.

B. The Need for Proposed Regulations

The legislative history to the Act states that the repeal of section 958(b)(4) was intended “to render ineffective certain transactions that are used to [sic] as a means of avoiding the subpart F provisions.” See H.R. 115–466, at 633 (2017). As a consequence of this repeal, many foreign entities that are part of multinational groups with U.S. subsidiaries are now considered CFCs even in cases where there is no avoidance of tax under subpart F.

The treatment of a foreign corporation as a CFC, or a U.S. person as a U.S. shareholder, has consequences outside of subpart F because many statutes and regulations outside of subpart F have rules that turn on the status of a foreign corporation as a CFC or the status of a U.S. person as a U.S. shareholder.

These proposed regulations propose changes that are generally intended to ensure that, in appropriate circumstances, the operation of certain rules is consistent with their application before the repeal of section 958(b)(4). This creates continuity and gives taxpayers tax certainty, which allows them to make economically efficient decisions. By restoring the pre-Act rule for certain provisions, the proposed regulations both alleviate certain burdens of CFC status resulting from the section 958(b)(4) repeal unrelated to the aforementioned intended purposes of the repeal and neutralize possible incentives to unfairly exploit the section 958(b)(4) repeal.

C. Baseline

The economic analysis that follows compares the proposed regulations to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of the proposed regulations. A no-action baseline reflects the current environment including the existing international tax regulations, prior to any amendment by the proposed regulations.

D. Cost and Benefits of the Proposed Regulations and Potential Alternatives

As described in Part I.A of this Special Analyses, the repeal of section 958(b)(4) causes stock owned by a foreign parent to be attributed to its U.S. subsidiaries, which can cause a foreign subsidiary of a foreign parent to be designated as a CFC, even in instances where there is little or no U.S. ownership in the foreign multinational group. The Treasury Department and the IRS estimate the number of U.S. subsidiaries owned 50 percent or more by a foreign corporation to be roughly 75,000 based on 2016 Treasury tax files data. To the extent that these foreign corporations have foreign subsidiaries, they are potentially affected by the proposed regulations. Unfortunately, however, data do not exist regarding the number of such foreign subsidiaries. The costs and benefits of these proposed regulations are discussed further in this Part I.D.

1. Benefits

Restoring continuity with pre-repeal rules in appropriate cases is beneficial in two primary ways. First, it reinstates

expected reporting burdens and tax costs for businesses that would otherwise experience unintended and unanticipated increases in these costs due to the unexpected switch to CFC designation described in Part I.A of this Special Analyses. Unanticipated increases in costs can be detrimental to normal business operations and can put affected groups at a disadvantage relative to competitors who did not experience such changes. Regulations designed to maintain continuity of normal business operations are appropriate and will promote a positive business environment relative to the no action baseline.

One of the provisions in these proposed regulations that alleviates burden is the provision under section 863 on income from space and ocean activities and international communications income. In this case (as well as in all other aspects of these proposed regulations), the proposed regulations prevent unintended disruption in business activity by determining CFC status as if section 958(b)(4) had not been repealed. In the absence of these proposed regulations, foreign-parented multinational groups in the space, ocean, and international communications industries that have U.S. subsidiaries could potentially have their foreign subsidiaries designated as CFCs. The designation of the foreign subsidiaries of the foreign-parented multinational groups as CFCs would result in all (in the case of space and ocean income) or half (in the case of international communications income) of the foreign subsidiary's space and ocean income or international communications income being treated as U.S. source income where the CFCs are controlled directly or indirectly by foreign persons. Comments received suggested that such treatment would render companies' business models untenable. Accordingly, the proposed regulations provide that for purposes of the treatment of space and ocean income and international communications income as U.S. source income, the determination of whether a foreign corporation is a CFC is made without regard to downward attribution from a foreign person. See Part I.F of the Explanation of Provisions for further explanation of this provision.

Another example of reduced burden under this rule relates to the timing of certain transactions. As explained in Part I.A of the Explanation of Provisions, section 267(a)(2) provides a rule for determining the time at which an otherwise deductible amount owed to a related person may be deducted. In general, if a payee is on the cash method

of accounting, the payor is not allowed a deduction until the amount is actually paid, even if the payor uses the accrual method of accounting. The current regulations include an exemption that allows an accrual-based payor to deduct certain treaty-exempt amounts before they are actually paid to a related foreign person. However, this exemption is not allowed if the related foreign person is a CFC. Instead, with respect to an amount owed to a CFC, the payor may only take a deduction in an earlier year to the extent that an amount attributable to the item is includible during such prior taxable year in the gross income of a U.S. person who owns stock in the CFC. However, after the repeal of section 958(b)(4), a CFC may not have any U.S. shareholders that would have an income inclusion under subpart F. In this situation, the payor would be unable to deduct the amount until it is actually paid.

Because of the effective date of the repeal of section 958(b)(4), a foreign corporation that was not a CFC under prior law could now become a CFC beginning as early as January 1, 2017 (even though the Act was not enacted until December 22, 2017). Accordingly, a taxpayer may have deducted an amount accrued in 2017 that, due to the repeal of section 958(b)(4), would no longer be allowable in 2017. Furthermore, due to the reduction of the corporate tax rate in the Act, a deduction allowed on a company's 2017 tax return at the then statutory rate of 35 percent would be valued at 21 percent if the taxpayer were forced to move the deduction to 2018 or 2019. The repeal of section 958(b)(4) in this situation may result in an inadvertent deferral of certain deductions with permanent tax effect and correspondingly create unnecessary required adjustments to the income tax provisions in companies' financial accounting statements. The proposed guidance removes inconsistent annual treatment of deductions for certain treaty-exempt payments in the year the amounts are accrued when the amounts are owed to related foreign corporations that do not have any direct or indirect U.S. shareholders.

The second benefit of restoring pre-Act treatment is that doing so can neutralize unanticipated incentives for tax minimization resulting from the repeal. That is, CFC status can both increase burdens and offer benefits, but the unintended increase in CFC designations and the ease with which taxpayers can create a CFC could incentivize taxpayers to take advantage of potential benefits arising from CFC status. For example, Part I.B of the

Explanation of Provisions describes a proposed revision that is intended to prevent taxpayers from using the special rule for CFCs in section 332(d)(3) to inappropriately avoid U.S. tax on a liquidating distribution. In addition, Part I.D of the Explanation of Provisions describes a proposed revision that is intended to prevent taxpayers from using a CFC that has no direct or indirect U.S. shareholders to take advantage of the special rule relating to CFCs that are grantors of a trust, facilitating tax-free distributions from the trust to U.S. beneficiaries despite no income inclusion by the shareholders of the CFC. Because these benefits were not intended for CFCs without direct or indirect U.S. shareholders, the anti-abuse aspects of these proposed regulations are designed to remove such incentives for taxpayers with those CFCs. Such regulations are beneficial because they promote an environment in which business operations are undertaken based on sound economic principles rather than for tax-motivated reasons.

2. Costs

The proposed regulations restore pre-section 958(b)(4) repeal CFC designation by determining CFC designation in limited situations as if section 958(b)(4) had not been repealed, essentially restoring the pre-repeal "status quo" in these situations. The proposed regulations do not impose any new systems, methods, structures, reporting, or other potentially burdensome rules that could increase compliance costs. In fact, as described above, they reduce costs or burdens that would ensue in the absence of the proposed regulations. Hence, in restoring the status quo in appropriate circumstances, the proposed regulations are not expected to impose new costs.

II. Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The proposed regulations generally affect CFCs and U.S. shareholders of CFCs. As an initial matter, CFCs, as foreign corporations, are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. Thus, the proposed regulations generally only affect small entities if a U.S. taxpayer that is a U.S. shareholder of a CFC is a small entity.

Businesses that are U.S. shareholders of CFCs are generally not small businesses because the ownership of sufficient stock of a CFC in order to be a U.S. shareholder generally entails significant resources and investment. Therefore, the Treasury Department and the IRS have determined that the proposed regulations would not affect a substantial number of domestic small business entities. Moreover, the proposed regulations do not impose any new costs on taxpayers. Consequently, the Treasury Department and the IRS have determined that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Treasury Department and the IRS request comments on the impact of these proposed regulations on small business entities.

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. The Treasury Department and the IRS also request comments on whether any other rules should be modified in light of the repeal of section 958(b)(4).

All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Karen J. Gate and Jorge M. Oben of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.267(a)–3 and adding entries for §§ 1.332–8 and 1.1297–1 in numerical order to read in part as follows:

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

Section 1.267(a)–3 also issued under 26 U.S.C. 267(a)(3)(A) and (a)(3)(B)(ii).

* * * * *

Section 1.332–8 also issued under 26 U.S.C. 332(d)(4).

* * * * *

Section 1.1297–1 also issued under 26 U.S.C. 1298(g).

* * * * *

■ **Par. 2.** Section 1.267(a)–3 is amended by:

- 1. Removing the language "or (a)(3)" from paragraph (c)(2).
- 2. Revising paragraph (c)(4).
- 3. In paragraph (d), revising the second sentence and adding five sentences at the end of the paragraph.

The revisions and addition read as follows:

§ 1.267(a)–3 Deduction of amounts owed to related foreign persons.

* * * * *

(c) * * *

(4) *Certain amounts owed to certain controlled foreign corporations.* An amount (other than interest) that is income of a related foreign person with respect to which the related foreign person is exempt from United States taxation on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits) is exempt from the application of section 267(a)(3)(B)(i) if the related foreign person is a controlled foreign corporation that does not have any United States shareholders (as defined in section 951(b)) that own (within the meaning of section 958(a)) stock of the controlled foreign corporation.

* * * * *

(d) * * * Except as otherwise provided in this paragraph (d), the regulations in this section issued under section 267 apply to all other deductible amounts that are incurred after July 31, 1989, but do not apply to amounts that are incurred pursuant to a contract that

was binding on September 29, 1983, and at all times thereafter (unless the contract was renegotiated, extended, renewed, or revised after that date). Paragraph (c)(2) of this section applies to payments accrued on or after October 22, 2004. For payments accrued before October 22, 2004, see § 1.267(a)–3(c)(2), as contained in 26 CFR part 1, revised as of April 1, 2004. Paragraph (c)(4) of this section applies to payments accrued on or after October 1, 2019. For payments accrued before October 1, 2019, a taxpayer may apply paragraph (c)(4) of this section for payments accrued during the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations. For payments accrued before October 22, 2004, see § 1.267(a)–3(c)(4), as contained in 26 CFR part 1, revised as of April 1, 2004.

■ **Par. 3.** Section 1.332–8 is added to read as follows:

§ 1.332–8 Recognition of gain on liquidation of certain holding companies.

(a) *Definition of controlled foreign corporation.* For purposes of section 332(d)(3), a controlled foreign corporation has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

(b) *Applicability date.* This section applies to distributions in complete liquidation occurring on or after October 1, 2019, and to distributions in complete liquidation occurring before October 1, 2019, that result from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after October 1, 2019. For distributions in complete liquidation occurring before October 1, 2019, other than distributions in complete liquidation occurring before October 1, 2019, that result from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after October 1, 2019, a taxpayer may apply this section to distributions in complete liquidation occurring during the last taxable year of a

distributee foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply this section with respect to all foreign corporations.

■ **Par. 4.** Section 1.367(a)–8 is amended by:

- 1. Revising the second sentence of paragraph (k)(14)(ii).
- 2. In paragraph (p)(3), designating Examples 1 through 3 as paragraphs (p)(3)(i) through (iii), respectively.
- 3. In newly redesignated paragraphs (p)(3)(i) through (iii), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(p)(3)(i)(i) and (ii)	(p)(3)(i)(A) and (B).
(p)(3)(ii)(i) and (ii)	(p)(3)(ii)(A) and (B).
(p)(3)(iii)(i) and (ii)	(p)(3)(iii)(A) and (B).

■ 4. In each newly redesignated paragraph listed in the first column, removing the language in the second column and adding in its place the language in the third column:

Paragraph	Remove	Add
(p)(3)(i)(B)	this <i>Example 1</i>	In paragraph (p)(3)(i)(A) of this section (the facts of this <i>Example 1</i>).
(p)(3)(ii)(B)	this <i>Example 2</i>	In paragraph (p)(3)(ii)(A) of this section (the facts of this <i>Example 1</i>).

- 5. In paragraph (q)(2):
 - a. Removing the language “at least 5% (applying the attribution rules of section 318, as modified by section 958(b))” each place that it appears and adding “at least 5% (determined as provided in

paragraph (k)(14)(ii) of this section)” in its place.

■ b. Designating *Examples 1* through *25* as paragraphs (q)(2)(i) through (xxv), respectively.

■ 6. In newly redesignated paragraphs (q)(2)(i) through (xxv), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(q)(2)(i)(i) and (ii)	(q)(2)(i)(A) and (B).
(q)(2)(ii)(i) and (ii)	(q)(2)(ii)(A) and (B).
(q)(2)(ii)(B)(A) and (B)	(q)(2)(ii)(B)(1) and (2).
(q)(2)(iii)(i) and (ii)	(q)(2)(iii)(A) and (B).
(q)(2)(iv)(i) and (ii)	(q)(2)(iv)(A) and (B).
(q)(2)(iv)(B)(A) and (B)	(q)(2)(iv)(B)(1) and (2).
(q)(2)(iv)(B)(2)(1) through (3)	(q)(2)(iv)(B)(2)(1) through (iii).
(q)(2)(v)(i) and (ii)	(q)(2)(v)(A) and (B).
(q)(2)(vi)(i) through (iii)	(q)(2)(vi)(A) through (C).
(q)(2)(vi)(B)(A) and (B)	(q)(2)(vi)(B)(1) and (2).
(q)(2)(vi)(B)(2)(1) through (3)	(q)(2)(vi)(B)(2)(1) through (iii).
(q)(2)(vii)(i) and (ii)	(q)(2)(vii)(A) and (B).
(q)(2)(viii)(i) and (ii)	(q)(2)(viii)(A) and (B).
(q)(2)(ix)(i) and (ii)	(q)(2)(ix)(A) and (B).
(q)(2)(x)(i) and (ii)	(q)(2)(x)(A) and (B).
(q)(2)(x)(B)(A) through (C)	(q)(2)(x)(B)(1) through (3).
(q)(2)(xi)(i) through (iii)	(q)(2)(xi)(A) through (C).
(q)(2)(xii)(i) and (ii)	(q)(2)(xii)(A) and (B).
(q)(2)(xii)(B)(A) through (C)	(q)(2)(xii)(B)(1) through (3).
(q)(2)(xiii)(i) and (ii)	(q)(2)(xiii)(A) and (B).
(q)(2)(xiv)(i) and (ii)	(q)(2)(xiv)(A) and (B).

Old paragraphs	New paragraphs
(q)(2)(xiv)(B)(A) and (B)	(q)(2)(xiv)(B)(1) and (2).
(q)(2)(xv)(i) and (ii)	(q)(2)(xv)(A) and (B).
(q)(2)(xvi)(i) and (ii)	(q)(2)(xvi)(A) and (B).
(q)(2)(xvii)(i) and (ii)	(q)(2)(xvii)(A) and (B).
(q)(2)(xvii)(B)(A) through (C)	(q)(2)(xvii)(B)(1) through (3).
(q)(2)(xvii)(B)(3)(1) through (3)	(q)(2)(xvii)(B)(3)(i) through (iii).
(q)(2)(xviii)(i) and (ii)	(q)(2)(xviii)(A) and (B).
(q)(2)(xix)(i) and (ii)	(q)(2)(xix)(A) and (B).
(q)(2)(xx)(i) through (vi)	(q)(2)(xx)(A) through (F).
(q)(2)(xx)(B)(A) and (B)	(q)(2)(xx)(B)(1) and (2).
(q)(2)(xx)(B)(1)(1) and (2)	(q)(2)(xx)(B)(1)(i) and (ii).
(q)(2)(xxi)(i) and (ii)	(q)(2)(xxi)(A) and (B).
(q)(2)(xxi)(B)(A) through (C)	(q)(2)(xxi)(B)(1) through (3).
(q)(2)(xxii)(i) through (iii)	(q)(2)(xxii)(A) through (C).
(q)(2)(xxii)(B)(A) through (C)	(q)(2)(xxii)(B)(1) through (3).
(q)(2)(xxii)(C)(A) through (C)	(q)(2)(xxii)(C)(1) through (3).
(q)(2)(xxiii)(i) through (iv)	(q)(2)(xxiii)(A) through (D).
(q)(2)(xxiii)(B)(A) through (D)	(q)(2)(xxiii)(B)(1) through (4).
(q)(2)(xxiii)(C)(A) and (B)	(q)(2)(xxiii)(C)(1) and (2).
(q)(2)(xxiv)(i) and (ii)	(q)(2)(xxiv)(A) and (B).
(q)(2)(xxv)(i) and (ii)	(q)(2)(xxv)(A) and (B).

■ 7. In each newly redesignated paragraph listed in the first column, removing the language in the second

column and adding in its place the language in the third column:

Paragraph	Remove	Add
(q)(2)(ii)(B)(2)	paragraph (ii)(A) of this <i>Example 2</i>	paragraph (q)(2)(ii)(B)(1) of this section (paragraph (1) in the results in this <i>Example 2</i>).
(q)(2)(iv)(B)(2)(i)	paragraph (ii)(A) of this <i>Example 4</i>	paragraph (q)(2)(iv)(B)(1) of this section (paragraph (1) in the results in this <i>Example 4</i>).
(q)(2)(vi)(B)(1)	paragraph (ii)(B) of this <i>Example 6</i>	paragraph (q)(2)(vi)(B)(2) of this section (paragraph (2) in the results in this <i>Example 6</i>).
(q)(2)(vi)(C)	paragraph (i) of this <i>Example 6</i>	paragraph (q)(2)(vi)(A) of this section (the facts in this <i>Example 6</i>).
(q)(2)(xi)(C)	paragraph (i) of this <i>Example 11</i>	paragraph (q)(2)(xi)(A) of this section (the facts in this <i>Example 11</i>).
(q)(2)(xx)(C)	paragraph (i) of this <i>Example 20</i>	paragraph (q)(2)(xx)(A) of this section (the facts in this <i>Example 20</i>).
(q)(2)(xx)(C)	paragraph (ii) of this <i>Example 20</i>	paragraph (q)(2)(xx)(B) of this section (the results in this <i>Example 20</i>).
(q)(2)(xx)(D)	paragraph (i) of this <i>Example 20</i>	paragraph (q)(2)(xx)(A) of this section (the facts in this <i>Example 20</i>).
(q)(2)(xx)(D)	paragraph (ii) of this <i>Example 20</i>	paragraph (q)(2)(xx)(B) of this section (the facts in this <i>Example 20</i>).
(q)(2)(xx)(E)	paragraph (i) of this <i>Example 20</i>	paragraph (q)(2)(xx)(A) of this section (the facts in this <i>Example 20</i>).
(q)(2)(xx)(F)	paragraph (i) of this <i>Example 20</i>	paragraph (q)(2)(xx)(A) of this section (the facts in this <i>Example 20</i>).
(q)(2)(xxii)(C) introductory text	in paragraph (i) of this <i>Example 22</i>	paragraph (q)(2)(xxii)(A) of this section (the facts in this <i>Example 22</i>).
(q)(2)(xxiii)(C) introductory text	paragraph (i) of this <i>Example 23</i>	paragraph (q)(2)(xxiii)(A) of this section (the facts in this <i>Example 23</i>).
(q)(2)(xxiii)(C) introductory text	paragraph (ii) of this <i>Example 23</i>	paragraph (q)(2)(xxiii)(B) of this section (the results in this <i>Example 23</i>).
(q)(2)(xxiii)(D)	paragraph (i) of this <i>Example 23</i>	paragraph (q)(2)(xxiii)(A) of this section (the facts in this <i>Example 23</i>).
(q)(2)(xxiv)(A)	in paragraph (i) of <i>Example 6</i>	paragraph (q)(2)(vi)(A) of this section (the facts in <i>Example 6</i>).

■ 8. Amend each paragraph listed in the first column, by removing the language

in the second column and adding in its place the language in the third column:

Paragraph	Remove	Add
(c)(1)(ii)	(q)(2) of this section, <i>Example 6</i>	(q)(2)(vi) of this section.
(c)(4)(iv)	paragraph (q)(2) of this section, <i>Examples 1, 2, 3, and 5.</i>	paragraphs (q)(2)(i), (ii), (iii), and (v) of this section.

Paragraph	Remove	Add
(j)(1)	(q)(2) of this section, Example 2	(q)(2)(ii) of this section.
(k)(1) introductory language	(q)(2) of this section, Example 4	(q)(2)(iv) of this section.
(k)(1)(ii)	(q)(2) of this section, Example 3	(q)(2)(iii) of this section.
(k)(1)(iii)	(q)(2) of this section, Example 11	(q)(2)(xi) of this section.
(k)(6)(i)	(q)(2) of this section, Example 5	(q)(2)(v) of this section.
(k)(6)(i)	(q)(2) of this section, Example 6	(q)(2)(vi) of this section.
(k)(6)(ii)	(q)(2) of this section, Example 7	(q)(2)(vii) of this section.
(k)(6)(iii)	(q)(2) of this section, Example 8	(q)(2)(viii) of this section.
(k)(8)	(q)(2) of this section, Example 9	(q)(2)(ix) of this section.
(k)(12)(i)	(q)(2) of this section, Example 20	(q)(2)(xx) of this section.
(k)(14) introductory language	paragraph (q)(2), Examples 4, 6, 10, 12, 17, 21, and 23 of this section.	paragraphs (q)(2)(iv), (vi), (x), (xii), (xvii), (xxi), and (xxiii) of this section.
(m)(1)	(q)(2) of this section, Example 13	(q)(2)(xiii) of this section.
(n)(1)	(q)(2) of this section, Example 14	(q)(2)(xiv) of this section.
(o)(1)(ii)	(q)(2) of this section, Example 15	(q)(2)(xv) of this section.
(o)(1)(iii) introductory language	(q)(2) of this section, Example 16	(q)(2)(xvi) of this section.
(o)(5)(i)(A)	(q)(2) of this section, Example 18	(q)(2)(xviii) of this section.
(o)(5)(i)(B)	(q)(2) of this section, Example 19	(q)(2)(xix) of this section.
(o)(5)(i)(C)	(q)(2) of this section, Example 22	(q)(2)(xxii) of this section.
(o)(5)(i)(D)	(q)(2) of this section, Example 22	(q)(2)(xxiii) of this section.
(o)(6)	(q)(2) of this section, Example 20	(q)(2)(xx) of this section.
(r)(2)(i)	paragraph (q)(2) of this section, Examples 24 and 25.	paragraphs (q)(2)(xxiv) and (xxv) of this section.

■ 9. Revising the heading of paragraph (r).

■ 10. Adding two sentences at the end of paragraph (r)(1)(i).

The revision and addition read as follows:

§ 1.367(a)–8 Gain recognition agreement requirements.

* * * * *

(k) * * *
(14) * * *

(ii) * * * If, as a result of the disposition or other event, a foreign corporation acquires the transferred stock or securities or, as applicable, substantially all the assets of the transferred corporation, the condition of this paragraph (k)(14)(ii) is satisfied only if the U.S. transferor owns at least five percent (applying the attribution rules of section 318, as modified by section 958(b), without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider the U.S. transferor as owning stock which is owned by a person who is not a United States person) of the total voting power and the total value of the outstanding stock of such foreign corporation.

* * * * *

(r) *Applicability dates.* (1) * * *

(i) * * * Paragraph (k)(14)(ii) of this section applies to transfers occurring on or after October 1, 2019, and to transfers occurring before October 1, 2019, that result from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after October 1, 2019. For transfers occurring before October 1, 2019, other than transfers occurring before October 1, 2019, that result from an entity classification election made under

§ 301.7701–3 of this chapter that is filed on or after October 1, 2019, a taxpayer may apply paragraph (k)(14)(ii) of this section to transfers occurring during the last taxable year of a transferee foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations.

* * * * *

■ **Par. 5.** Section 1.672(f)–2 is amended by revising paragraphs (a) and (e) to read as follows:

§ 1.672(f)–2 Certain foreign corporations.

(a) *Application of general rule in this section.* Subject to the provisions of paragraph (b) of this section, if the owner of any portion of a trust upon application of the grantor trust rules without regard to section 672(f) is a controlled foreign corporation or a passive foreign investment company (as defined in section 1297), the corporation will be treated as a domestic corporation for purposes of applying the rules of § 1.672(f)–1. For purposes of this section, the only controlled foreign corporations taken into account are those that are controlled foreign corporations within the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(e) *Applicability dates.* Except as provided in this paragraph (e), the rules of this section apply to taxable years of shareholders of controlled foreign corporations and passive foreign investment companies beginning after August 10, 1999, and taxable years of controlled foreign corporations and passive foreign investment companies ending with or within such taxable years of the shareholders. The provisions in paragraph (a) of this section relating to the controlled foreign corporations taken into account for purposes of this section apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

■ **Par. 6.** Section 1.706–1 is amended by:

- 1. Revising paragraph (b)(6)(ii).
- 2. Revising the heading for paragraph (b)(6)(v).

■ 3. In paragraph (b)(6)(v)(A), revising the first sentence and adding two sentences after the first sentence.

The revisions and addition read as follows:

§ 1.706-1 Taxable years of partner and partnership.

* * * * *

(b) * * *
(6) * * *

(ii) *Definition of foreign partner.* For purposes of this paragraph (b)(6), a foreign partner is any partner that is not a United States person (as defined in section 7701(a)(30)), except that a partner that is a controlled foreign corporation (within the meaning of section 957(a)) in which a United States shareholder (as defined in section 951(b)) owns (within the meaning of section 958(a)) stock is not treated as a foreign partner.

* * * * *

(v) *Applicability dates.* (A) * * * The provisions of this paragraph (b)(6) (other than paragraph (b)(6)(iii) of this section and paragraph (b)(6)(ii) of this section to the extent described in the next sentence) apply to partnership taxable years, other than those of an existing partnership, that begin on or after July 23, 2002. The provisions in paragraph (b)(6)(ii) of this section relating to controlled foreign corporations apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

* * * * *

* * * * *

■ **Par. 7.** Section 1.863-8 is amended by:

- 1. In paragraph (b)(2)(ii), revising the first sentence and adding a sentence at the end of the paragraph.
- 2. Revising paragraph (h).

The revisions and addition read as follows:

§ 1.863-8 Source of income derived from space and ocean activity under section 863(d).

* * * * *

(b) * * *
(2) * * *

(ii) * * * Space and ocean income derived by a controlled foreign corporation (CFC) is income from sources within the United States. * * * For purposes of this section, a controlled foreign corporation has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(h) *Applicability dates.* Except as provided in this paragraph (h), this section applies to taxable years beginning on or after December 27, 2006. The provisions in paragraph (b)(2)(ii) of this section relating to the meaning of CFC apply to taxable years of foreign corporations ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

■ **Par. 8.** Section 1.863-9 is amended by revising paragraphs (b)(2)(ii) and (l) to read as follows:

§ 1.863-9 Source of income derived from communications activity under section 863(a), (d), and (e).

* * * * *

(b) * * *
(2) * * *

(ii) *International communications income derived by a controlled foreign corporation.* International communications income derived by a controlled foreign corporation (CFC) is one-half from sources within the United States and one-half from sources without the United States. For purposes of this section, a controlled foreign corporation has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(l) *Applicability dates.* Except as otherwise provided in this paragraph (l), this section applies to taxable years beginning on or after December 27, 2006. The provisions in paragraph (b)(2)(ii) of this section relating to the meaning of CFC apply to taxable years of foreign corporations ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

■ **Par. 9.** Section 1.904-5, as proposed to be amended at 83 FR 63200 (December 7, 2018), is further amended by:

- 1. Revising paragraph (a)(4)(i).
- 2. Revising the first sentence of paragraph (a)(4)(vi).
- 3. Revising paragraph (o).

The revisions read as follows:

§ 1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.

(a) * * *
(4) * * *

(i) The term *controlled foreign corporation* has the meaning given such term by section 957 (taking into account the special rule for certain captive insurance companies contained in section 953(c)), determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(vi) The term *United States shareholder* has the meaning given such term by section 951(b) (taking into account the special rule for certain captive insurance companies contained in section 953(c)), determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person, except that for purposes of this section, a United States shareholder includes any member of the controlled group of the United States shareholder. * * *

* * * * *

(o) *Applicability dates.* Except as otherwise provided in this paragraph (o), this section applies to taxable years that both begin after December 31, 2017, and end on or after December 4, 2018.

Paragraphs (a)(4)(i) and (vi) of this section apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States persons ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States persons ending before October 1, 2019, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

■ Par. 10. Section 1.958-2 is amended by:

■ 1. Removing and reserving paragraph (d)(2).

■ 2. In paragraph (g), designating Examples 1 through 6 as paragraphs (g)(1) through (6), respectively.

■ 3. In newly designated paragraphs (g)(1) and (2), removing the language “paragraph (c)(1)(iii) and (2) of this section” and adding “paragraphs (c)(1)(iii) and (c)(2) of this section” in its place.

■ 4. Revising newly designated paragraph (g)(4).

■ 5. Adding paragraph (h).

■ 6. Removing the parenthetical authority citation at the end of the section.

The revisions and addition read as follows:

§ 1.958-2 Constructive ownership of stock.

* * * * * (g) * * *

(4) Example 4. Foreign corporation U owns 100 percent of the one class of stock in domestic corporation V and also 100 percent of the one class of stock in foreign corporation W. Because more than 50 percent in value of the stock of V Corporation is owned by its sole shareholder, U Corporation, V Corporation is considered under paragraph (d)(1)(iii) of this section as owning the stock owned by U Corporation in W Corporation, and accordingly is a United States shareholder of W Corporation.

* * * * *

(h) Applicability date. Paragraphs (d)(2) and (g)(4) of this section apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign

corporations end. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

■ Par. 11. Section 1.1297-1, as proposed to be added at 84 FR 33120 (July 11, 2019), is amended by revising paragraphs (d)(1)(iii)(A) and (g)(1) to read as follows:

§ 1.1297-1 Definition of passive foreign investment company.

* * * * *

(d) * * *

(1) * * *

(A) Controlled foreign corporation.

For purposes of section 1297(e)(2)(A), the term controlled foreign corporation has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(g) * * *

(1) Paragraph (d)(1)(iii)(A) of this section applies to taxable years of shareholders ending on or after October 1, 2019. For taxable years of shareholders ending before October 1, 2019, a shareholder may apply paragraph (d)(1)(iii)(A) of this section to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the shareholder and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations.

* * * * *

■ Par. 12. Section 1.6049-5 is amended by revising paragraphs (c)(5)(i)(C) and (g) to read as follows:

§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(C) A controlled foreign corporation within the meaning of section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(g) Applicability dates. Except as otherwise provided in this paragraph (g), this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.) Paragraph (c)(5)(i)(C) of this section applies to payments made on or after October 1, 2019. For payments made before October 1, 2019, a taxpayer may apply paragraph (c)(5)(i)(C) of this section for payments during the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019-20567 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-130700-14]

RIN 1545-BM41

Classification of Cloud Transactions and Transactions Involving Digital Content; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG-130700-14) that was published in the Federal Register on August 14, 2019. The proposed

regulations relate to classification of cloud transactions for purposes of the international provisions of the Internal Revenue Code.

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by November 12, 2019.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-130700-14) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to CC:PA:LPD:PR (REG-130700-14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions

may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-130700-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations Robert Z. Kelley, (202) 317-6939; concerning submissions of comments and requests for a public hearing, email or call Regina L. Johnson at fdms.database@irs.counsel.treas.gov or (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 861 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-130700-14) contains errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-130700-14) that was the subject of FR Doc. 2019-17425, published at 84 FR 40317 (August 14, 2019), is corrected to read as follows:

1. On page 40320, first column, in the preamble, the sixteenth and seventeenth lines from the top of the second full paragraph, the language "of time, whether or not the content is transferred in a physical medium." is corrected to read "of time."

2. On page 40321, third column, in the preamble, the fourteenth line from the top of the second full paragraph, the language "licenses, and services, but there are" is corrected to read, "licenses, leases, and services, but there are".

§ 1.861-18 [Corrected]

■ 3. On page 40324, in the table for § 1.861-18, for the paragraph listed in "Paragraph" column, remove the language in the "Remove" column, and add in its place the language in the "Add" column.

Paragraph	Remove	Add
(c)(3), second sentence	the magnetic medium of a floppy disk, or in the main memory or hard drive of a computer, or in any other medium.	any medium.

§ 1.861-18 [Corrected]

■ 4. On page 40324, second column, in § 1.861-18, the seventh through ninth line from the top of paragraph (a)(3), the language "passage of time, whether or not the content is transferred in a physical medium. For example, digital content" is corrected to read "passage of time. For example, digital content".

§ 1.861-18 [Corrected]

■ 5. On page 40325, third column, in § 1.861-18, the second line of paragraph (i), the language "to transactions involving the transfer of" is corrected to read "to transactions not subject to § 1.861-19 involving the transfer of".

Crystal Pemberton,

Senior Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2019-21034 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

RIN 1505-AC64

Provisions Pertaining to Certain Investments in the United States by Foreign Persons

Correction

In proposed rule document 2019-20099 beginning on page 50174 in the issue of Tuesday, September 24, 2019, make the following correction:

On page 50174, in the first column, in the 23rd line, "October 24, 2019" should read "October 17, 2019".

[FR Doc. C1-2019-20099 Filed 10-1-19; 8:45 am]

BILLING CODE 1301-00-D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2018-0749]

RIN 1625-AA08

Special Local Regulations; Recurring Marine Events, Sector Miami

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise existing regulations and consolidate into one table special local regulations for recurring marine events at various locations within the geographic boundaries of the Seventh Coast Guard District Captain of the Port (COTP) Miami Zone. Consolidating marine events into one table simplifies Coast Guard oversight and public notification of special local regulations within COTP Miami Zone. The Coast Guard invites your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before November 1, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0749 using the Federal eRulemaking Portal at <http://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 Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305–535–4317, email Omar.Beceiro@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

Recurring races, swims, and other marine events within the Seventh Coast Guard District are currently listed in 33 CFR 100.701, Table to § 100.701. The process for amending the table (e.g., adding or removing marine events) is lengthy and inefficient since it includes recurring marine events for seven different COTP zones within the Seventh District. To expedite and simplify the rule-making process for new marine events/special local regulations, COTP’s resorted to creating individual rules rather than amending Table to § 100.701.

This rule serves two purposes: (1) Create a table of recurring marine events/special local regulations occurring solely within the COTP Miami Zone, and (2) consolidate into that table marine events/special local regulations previously established outside of Table to § 100.701. The resultant table would facilitate management of and public access to information about marine events within the COTP Miami Zone.

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

This rulemaking proposes to make the following changes:

1. Establish 33 CFR 100.702 Special Local Regulations; Marine Events Within the Captain of the Port Miami;
2. Move existing marine events/special local regulations from Table to § 100.701 under (a) COTP Zone Miami; Special Local Regulations (33 CFR 100.701) to new Table to § 100.702;
3. Move 33 CFR 100.723 Special Local Regulation; Fort Lauderdale Grand Prix of the Seas; Fort Lauderdale, FL to Table to § 100.702, and delete existing § 100.723;
4. Move 33 CFR 100.726, Special Local Regulation; Fort Lauderdale Air Show; Atlantic Ocean, Fort Lauderdale, FL to Table to § 100.702, and delete existing § 100.726;
5. Revise Special Local Regulation; Fort Lauderdale Air Show; Atlantic Ocean, Fort Lauderdale, FL dates to “One weekend in May (Friday, Saturday, and Sunday)” in Table to § 100.702;
6. Move 33 CFR 100.729, Columbus Day Regatta, Biscayne Bay, Miami, FL to Table to § 100.702, and delete existing § 100.729; and
7. Add Miami Beach Air and Sea Show (new) to Table to § 100.702.

Marine events are listed as occurring over a particular weekend and month each year. Exact dates are intentionally omitted since calendar dates for a specific weekend change from year to year. Once dates for a marine event are known, the Coast Guard notifies the public it intends to enforce the special local regulation through various means including a Notice of Enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

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 size, location, and duration of the special local regulations. These areas are limited in size and duration, and usually do not affect high vessel traffic areas. Moreover, the Coast Guard would provide advance notice of the regulated areas to the local maritime community by Local Notice to Mariners, Broadcast to Mariners via VHF–FM marine channel 16, and the rule would allow vessels to seek permission to enter the regulated area.

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 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 the establishment of special local regulations for recurring marine events within the COTP Miami Zone. Normally such actions are categorically excluded from further review under paragraphs L61 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 available in the docket where indicated in **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 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 <http://www.regulations.gov>. If your material cannot be submitted using <http://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 <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://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 <http://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 100

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 parts 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

- 1. The authority citation for Part 100 continues to read as follows:

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

- 2. Revise Table to § 100.701 to read as follows:

§ 100.701 Special Local Regulations; Marine Events in the Seventh Coast Guard District.

* * * * *

TABLE TO § 100.701

No./date	Event	Sponsor	Location
(a) COTP Zone San Juan; Special Local Regulations			
1. 1st Friday, Saturday, and Sunday of February.	CNSJ International Regatta.	Club Nautico de San Juan.	San Juan, Puerto Rico; (1) Outer Harbor Race Area. All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°28.4' N, 66°07.6' W; then south to Point 2 in position 18°28.1' N, 66°07.8' W; then southeast to Point 3 in position 18°27.8' N, 66°07.4' W; then southeast to point 4 in position 18°27.6' N, 66°07.3' W; then west to point 5 in position 18°27.6' N, 66°07.8' W; then north to point 6 in position 18°28.4' N, 66°07.8' W; then east to the origin.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
2. Last Full Weekend of March.	St. Thomas International Regatta.	St. Thomas Yacht Club	(2) Inner Harbor Race Area; All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°27.6' N, 66°07.8' W; then east to Point 2 in position 18°27.6' N, 66°07.1' W; then southeast to Point 3 in position 18°27.4' N, 66°06.9' W; then west to point 4 in position 18°27.4' N, 66°07.7' W; then northwest to the origin. St. Thomas, U.S. Virgin Islands; All waters of St. Thomas Harbor encompassed within the following points: Starting at Point 1 in position 18°19.9' N, 64°55.9' W; thence east to Point 2 in position 18°19.97' N, 64°55.8' W; thence southeast to Point 3 in position 18°19.6' N, 64°55.6' W; thence south to point 4 in position 18°19.1' N, 64°55.5' W; thence west to point 5 in position 18°19.1' N, 64°55.6' W; thence north to point 6 in position 18°19.6' N, 64°55.8' W; thence northwest back to origin at Harbor, St. Thomas, San Juan.
3. Last week of April	St. Thomas Carnival	Virgin Islands Carnival Committee.	St. Thomas, U.S. Virgin Islands; (1) Race Area. All waters of the St. Thomas Harbor located around Hassel Island, St. Thomas, U.S. Virgin Island encompassed within the following points: Starting at Point 1 in position 18°20.2' N, 64°56.1' W; thence southeast to Point 2 in position 18°19.7' N, 64°55.7' W; thence south to Point 3 in position 18°19.4' N, 64°55.7' W; thence southwest to point 4 in position 18°19.3' N, 64°56.0' W; thence northwest to point 5 in position 18°19.9' N, 64°56.5' W; thence northeast to point 6 in position 18°20.2' N, 64°56.3' W; thence east back to origin. (2) Jet Ski Race Area. All waters encompassed the following points: Starting at Point 1 in position 18°20.1' N, 64°55.9' W; thence west to Point 2 in position 18°20.1' N, 64°56.1' W; thence north to Point 3 in position 18°20.3' N, 64°56.1' W; thence east to Point 4 in position 18°20.3' N, 64°55.9' W; thence south back to origin. (3) Buffer Zone. All waters of the St. Thomas Harbor located around Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3' N, 64°55.9' W; thence southeast to Point 2 in position 18°19.7' N, 64°55.7' W; thence south to Point 3 in position 18°19.3' N, 64°55.72' W; thence southwest to Point 4 in position 18°19.2' N, 64°56' W; thence northwest to Point 5 in position 18°19.9' N, 64°56.5' W; thence northeast to Point 6 in position 18°20.3' N, 64°56.3' W; thence east back to origin. (4) Spectator Area. All waters of the St. Thomas Harbor located east of Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3' N, 64°55.8' W; thence southeast to Point 2 in position 18°19.9' N, 64°55.7' W; thence northeast to Point 3 in position 18°20.2' N, 64°55.5' W; thence northwest back to origin.
4. 1st Sunday of May	Ironman 70.3 St. Croix ..	Project St. Croix, Inc	St. Croix (Christiansted Harbor), U.S. Virgin Islands; All waters encompassed within the following points: point 1 on the shoreline at Kings Wharf at position 17°44'51" N, 064°42'16" W, thence north to point 2 at the southwest corner of Protestant Cay in position 17°44'56" N, 064°42'12" W, then east along the shoreline to point 3 at the southeast corner of Protestant Cay in position 17°44'56" N, 064°42'08" W, thence northeast to point 4 at Christiansted Harbor Channel Round Reef Northeast Junction Lighted Buoy RR in position 17°45'24" N, 064°41'45" W, thence southeast to point 5 at Christiansted Schooner Channel Lighted Buoy 5 in position 17°45'18" N, 064°41'43" W, thence southwest to point 6 at Christiansted Harbor Channel Buoy 15 in position 17°44'56" N, 064°41'56" W, thence southwest to point 7 on the shoreline north of Fort Christiansted in position 17°44'51" N, 064°42'05" W, thence west along the shoreline to origin.
5. July 4th	Fireworks Display	St. John Festival & Cul., Org.	St. John (West of Cruz Bay/Northeast of Steven Cay), U.S. Virgin Islands; All waters from the surface to the bottom for a radius of 200 yards centered around position 18°19'55" N, 064°48'06" W.
6. 3rd Week of July, Sunday.	San Juan Harbor Swim	Municipality of Cataño ..	San Juan Harbor, San Juan, Puerto Rico; All waters encompassed within the following points: point 1: La Puntilla Final, Coast Guard Base at position 18°27'33" N, 066°07'00" W, then south to point 2: Cataño Ferry Pier at position 18°26'36" N, 066°07'00" W, then northeast along the Cataño shoreline to point 3: Punta Cataño at position 18°26'40" N, 066°06'48" W, then northwest to point 4: Pier 1 San Juan at position 18°27'40" N, 066°06'49" W, then back along the shoreline to origin.
7. 1st Sunday of September.	Cruce A Nado International.	Cruce a Nado Inc	Ponce Harbor, Bahia de Ponce, San Juan; All waters of Bahia de Ponce encompassed within the following points: Starting at Point 1 in position 17°58.9' N, 66°37.5' W; thence southwest to Point 2 in position 17°57.5' N, 66°38.2' W; thence southeast to Point 3 in position 17°57.4' N, 66°37.9' W; thence northeast to point 4 in position 17°58.7' N, 66°37.3' W; thence northwest along the northeastern shoreline of Bahia de Ponce to the origin.
8. 2nd Sunday of October	St. Croix Coral Reef Swim.	The Buccaneer Resort ..	St. Croix, U.S. Virgin Islands; All waters of Christiansted Harbor within the following points: Starting at Point 1 in position 18°45.7' N, 64°40.6' W; then northeast to Point 2 in position 18°47.3' N, 64°37.5' W; then southeast to Point 3 in position 17°46.9' N, 64°37.2' W; then southwest to point 4 in position 17°45.51' N, 64°39.7' W; then northwest to the origin.
9. December 31st	Fireworks St. Thomas, Great Bay.	Mr. Victor Laurenza, Pyrotecnico, New Castle, PA.	St. Thomas (Great Bay area), U.S. Virgin Islands; All waters within a radius of 600 feet centered around position 18°19'14" N, 064°50'18" W.
10. December—1st week	Christmas Boat Parade	St. Croix Christmas Boat Committee.	St. Croix (Christiansted Harbor), U.S. Virgin Islands; 200 yards off-shore around Protestant Cay beginning in position 17°45'56" N, 064°42'16" W, around the cay and back to the beginning position.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
11. December—2nd week	Christmas Boat Parade	Club Nautico de San Juan.	San Juan, Puerto Rico; Parade route. All waters of San Juan Harbor within a moving zone that will begin at Club Nautico de San Juan, move towards El Morro and then return, to Club Nautico de San Juan; this zone will at all times extend 50 yards in front of the lead vessel, 50 yards behind the last vessel, and 50 yards out from all participating vessels.
(b) COTP Zone Key West; Special Local Regulations			
1. January 1st	Blessing of the Fleet	Islamorada Charter Boat Association.	From Whale Harbor Channel to Whale Harbor Bridge, Islamorada, Florida.
2. January through April, last Monday or Tuesday.	Wreckers Cup Races	Schooner Wharf Bar	Key West Harbor to Sand Key, Florida (Gulf of Mexico side).
3. 3rd Week of January, Monday–Friday.	Yachting Key West Race Week.	Premiere Racing, Inc	Inside the reef on either side of main ship channel, Key West Harbor Entrance, Key West, Florida.
4. 1st Saturday of February.	The Bogey	Florida Bay Outfitters	Blackwater Sound (entire sound), Key Largo, Florida.
5. 1st Sunday of February	The Bacall	Florida Bay Outfitters	Blackwater Sound (entire sound), Key Largo, Florida.
6. 3rd Weekend of April ..	Miami to Key Largo Sailboat Race.	MYC Youth Sailing Foundation, Inc.	Biscayne Bay and Intracoastal Waterway from the Rickenbacker Causeway in Miami, Florida to Key Biscayne to Cape Florida to Soldier Key to Sands Key to Elliot Key to Two Stacks to Card Sound to Barnes Sound to Blackwater Sound in Key Largo, Florida no closer than 500 feet from each vessel.
7. Last Friday of April	Conch Republic Navy Parade and Battle.	Conch Republic	All waters approximately 150 yards offshore from Ocean Key Sunset Pier, Mallory Square and the Hilton Pier within the Key West Harbor in Key West, Florida.
8. 1st Weekend of June ..	Swim around Key West	Florida Keys Community College.	Beginning at Smather's Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Flemming Cut, south on Cow Key Channel and west back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels.
9. 2nd Week of November, Wednesday–Sunday.	Key West World Championship.	Super Boat International Productions, Inc.	In the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance.
10. 1st Thursday of December.	Boot Key Harbor Christmas Boat Parade.	Dockside Marina	Boot Key Harbor (entire harbor), Marathon, Florida.
11. 2nd Sunday of December.	Key Colony Beach Holiday Boat Parade.	Key Colony Beach Community Association.	Key Colony Beach, Marathon, Florida, between Vaca Cut Bridge and Long Key Bridge.
12. 3rd Saturday of December.	Key Largo Boat Parade	Key Largo Boat Parade	From Channel Marker 41 on Dusenbury Creek in Blackwater Sound to tip of Stillwright Point in Blackwater Sound, Key Largo, Florida.
13. 3rd Saturday of December.	Key West Lighted Boat Parade.	Schooner Wharf Bar	All waters between Christmas Tree Island and Coast Guard Station thru Key West Harbor to Mallory Square, approximately 35 yards from shore.
(c) COTP Zone St. Petersburg; Special Local Regulations			
1. 3rd Saturday of January.	Gasparilla Children's Parade Air show.	Air Boss and Consulting	All waters of Hillsborough Bay north of an line drawn at 27°55' N, west of Davis Islands, and south of the Davis Island Bridge.
2. Last Friday, Saturday, and Sunday of March.	Honda Grand Prix	Honda Motor Company and City of St. Petersburg.	Demens Landing St. Petersburg Florida; All waters within 100 ft. of the seawall.
3. Last Friday, Saturday, and Sunday of March.	St. Pete Grand Prix Air show.	Honda Motor Company and City of St. Petersburg.	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida, within two nautical miles of the Albert Whitted Airport.
4. Last Sunday of April	St. Anthony's Triathlon ..	St. Anthony's Healthcare	Gulf of Mexico, St. Petersburg, Florida within one nautical mile of Spa Beach.
5. July 4th	Freedom Swim	None	Peace River, St. Petersburg, Florida within two nautical miles of the US 41 Bridge.
6. 1st Sunday of July	Suncoast Offshore Grand Prix.	Suncoast Foundation for the Handicapped.	Gulf of Mexico in the vicinity of Sarasota, Florida from New Pass to Siesta Beach out to eight nautical miles.
7. 3rd Friday, Saturday, and Sunday of September.	Homosassa Raft Race ..	Citrus 95 FM radio	Homosassa River in Homosassa, Florida. Between Private Green Dayboard 81 east located in approximate position 28°46'58.937" N, 082°37'25.131" W to private Red Dayboard 2 located in approximate position 28°47'19.939" N, 082°36'44.36" W.
8. September 30th	Clearwater Superboat Race.	Superboat International	(1) Race Area; All waters of the Gulf of Mexico near St. Petersburg, Florida, contained within the following points: 27°58.96' N, 82°50.05' W, thence to position 27°58.60' N, 82°50.04' W, thence to position 27°58.64' N, 82°50.14' W, thence to position 28°00.43' N, 82°50.02' W, thence to position 28°00.45' N, 82°50.13' W, thence back to the start/finish position; (2) Buffer Area; All waters of the Gulf of Mexico encompassed within the following points: 27°58.4' N, 82°50.2' W, thence to position 27°58.3' N, 82°49.9' W, thence to position 28°00.6' N, 82°50.2' W, thence to position 28°00.7' N, 82°49.7' W, thence back to position 27°58.4' N, 82°50.2' W. (3) Spectator Area; All waters of Mexico seaward of the following points: 27°58.6' N, 82°50.2' W, thence to position 28°00.5' N, 82°50.2' W.
9. Last weekend of September.	Cocoa Beach Grand Prix of the Seas.	Powerboat P1—USA, LLC.	Atlantic ocean at Cocoa Beach, Florida. Sheppard Park. All waters encompassed within the following points: Starting at point 1 in position 28°22.285' N, 80°36.033' W; thence east to Point 2 in position 28°22.253' N, 80°35.543' W; thence south to Point 3 in position 28°21.143' N, 80°35.700' W; thence west to Point 4 in position 28°21.195' N, 80°36.214' W; thence north back to the origin.
10. 2nd Friday, Saturday, and Sunday of October.	St. Petersburg Airfest	City of St. Petersburg	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida all waters within 2 nautical miles of the Albert Whitted Airport.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
11. 3rd Thursday, Friday, and Saturday of November.	Ironman World Championship Triathlon.	City of Clearwater & Ironman North America.	Gulf of Mexico, Clearwater, Florida within 2 nautical miles of Clearwater Beach FL.
(d) COTP Zone Jacksonville; Special Local Regulations			
1. Last Saturday of February.	El Cheapo Sheepshead Tournament.	Jacksonville Offshore Fishing Club.	Mayport Boat Ramp, Jacksonville, Florida; 500 foot radius from the boat ramp.
2. 1st Saturday of March	Jacksonville Invitational	Stanton Rowing Foundation (May vary).	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
3. 1st Saturday of March	Stanton Invitational (Rowing Race).	Stanton Rowing Foundation.	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
4. 1st weekend of March	Hydro X Tour	H2X Racing Promotions	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47'59" N, 81°43'41" W; thence south to Point 2 in position 28°47'53" N, 81°43'41" W; thence east to Point 3 in position 28°47'53" N, 81°43'19" W; thence north to Point 4 in position 28°47'59" N, 81°43'19" W; thence west back to origin.
5. 2nd Full Weekend of March.	TICO Warbird Air Show	Valiant Air Command	Titusville; Indian River, FL: All waters encompassed within the following points: Starting at the shoreline then due east to Point 1 at position 28°31'25.15" N, 080°46'32.73" W, then south to Point 2 located at position 28°30'55.42" N, 080°46'32.75" W, then due west to the shoreline.
6. 3rd Weekend of March	Tavares Spring Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
7. Palm Sunday in March or April.	Blessing of the Fleet—Jacksonville.	City of Jacksonville Office of Special Events.	St. Johns River, Jacksonville, Florida in the vicinity of Jacksonville Landing between the Main Street Bridge and Acosta Bride.
8. Palm Sunday in March or April.	Blessing of the Fleet—St. Augustine.	City of St. Augustine	St. Augustine Municipal Marina (entire marina), St. Augustine Florida.
9. 1st Full Weekend of April (Saturday and Sunday).	Mount Dora Yacht Club Sailing Regatta.	Mount Dora Yacht Club	Lake Dora, Mount Dora, Florida—500 feet off Grantham Point.
10. 3rd Saturday of April	Jacksonville City Championships.	Stanton Rowing Foundation.	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
11. 3rd weekend of April	Florida Times Union Redfish Roundup.	The Florida Times-Union	Sister's Creek, Jacksonville, Florida; All waters within a 100 yard radius of Jim King Park and Boat Ramp at Sister's Creek Marina, Sister's Creek.
12. 2nd Weekend in May	Saltwater Classic—Port Canaveral.	Cox Events Group	All waters of the Port Canaveral Harbor located in the vicinity of Port Canaveral, Florida encompassed within the following points: Starting at Point 1 in position 28°24'32" N, 080°37'22" W, then north to Point 2 28°24'35" N, 080°37'22" W, then due east to Point 3 at 28°24'35" N, 080°36'45" W, then south to Point 4 at 28°24'32" N, 080°36'45", then west back to the original point.
13. 1st Friday of May	Isle of Eight Flags Shrimp Festival Pirate Landing and Fireworks.	City of Fernandina Beach.	All waters within a 500 yard radius around approximate position 30°40'15" N, 81°28'10" W.
14. 1st Saturday of May ..	Mug Race	The Rudder Club of Jacksonville, Inc.	St. Johns River; Palatka to Buckman Bridge.
15. 3rd Friday—Sunday of May.	Space Coast Super Boat Grand Prix.	Super Boat International Productions, Inc.	Atlantic Ocean in the vicinity of Cocoa Beach, Florida includes all waters encompassed within the following points: Starting at Point 1 in position 28°22'16" N, 80°36'04" W; thence east to Point 2 in position 28°22'15" N, 80°35'39" W; thence south to Point 3 in position 28°19'47" N, 80°35'55" W; thence west to Point 4 in position 28°19'47" N, 80°36'22" W; thence north back to origin.
16. 4th weekend of May ..	Memorial Day RiverFest	City of Green Cove Springs.	St. Johns River, Green Cove Springs, Florida; All waters within a 500-yard radius around approximate position 29°59'39" N, 081°40'33" W.
17. Last full week of May (Monday—Friday).	Bluewater Invitational Tournament.	Northeast Florida Marlin Association.	There is a no-wake zone in affect from the St. Augustine City Marina out to the end of the St. Augustine Jetty's 6 a.m.—8 a.m. and 3 p.m.—5 p.m. during the above days.
18. 2nd weekend of June	Hydro X Tour	H2X Racing Promotions	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47'59" N, 81°43'41" W; thence south to Point 2 in position 28°47'53" N, 81°43'41" W; thence east to Point 3 in position 28°47'53" N, 81°43'19" W; thence north to Point 4 in position 28°47'59" N, 81°43'19" W; thence west back to origin.
19. 1st Saturday of June	Florida Sport Fishing Association Offshore Fishing Tournament.	Florida Sport Fishing Association.	Port Canaveral, Florida from Sunrise Marina to the end of Port Canaveral Inlet.
20. 2nd weekend of June (Saturday and Sunday).	Kingfish Challenge	Ancient City Game Fish Association.	There is a no-wake zone in affect from the St. Augustine City Marina in St. Augustine, Florida out to the end of the St. Augustine Jetty's 6 a.m.—8 a.m. and 3 p.m.—5 p.m.
21. 3rd Friday—Sunday of June.	Daytona Beach Grand Prix of the Sea.	Powerboat P1—USA	All waters of the Atlantic Ocean East of Cocoa Beach, Florida encompassed within the following points: Starting at Point 1 in position 29°14'60" N, 81°00'77" W; thence east to Point 2 in position 29°14'78" N, 80°59'802" W; thence south to Point 3 in position 28°13'860" N, 80°59'76" W; thence west to Point 4 in position 29°13'68" N, 81°00'28" W; thence north back to origin.
22. 3rd Saturday of July ..	Halifax Rowing Association Summer Regatta.	Halifax Rowing Association.	Halifax River, Daytona, Florida, south of Memorial Bridge—East Side.
23. 3rd week of July	Greater Jacksonville Kingfish Tournament.	Jacksonville Marine Charities, Inc.	Jacksonville, Florida; All waters of the St. Johns River, from lighted buoy 10 (LLNR 2190) in approximate position 30°24'22" N, 081°24'59" W to Lighted Buoy 25 (LLNR 7305).
24. Last weekend of September.	Jacksonville Dragon Boat Festival.	In the Pink Boutique, Inc	St. Johns River, Jacksonville, Florida. In front of the Landing, between the Acosta & Main Street bridges from approximate position 30°19'26" N, 081°39'47" W to approximate position 30°19'26" N, 81°39'32" W.
25. 2nd week of October	First Coast Head Race ..	Stanton Rowing Foundation.	St. Johns River and Arlington River, Jacksonville, Florida, starting near the Arlington Marina and ending on the Arlington River near the Atlantic Blvd. Bridge.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
26. 1st weekend of November.	Hydro X Tour	H2X Racing Promotions	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47'59" N, 81°43'41" W; thence south to Point 2 in position 28°47'53" N, 81°43'41" W; thence east to Point 3 in position 28°47'53" N, 81°43'19" W; thence north to Point 4 in position 28°47'59" N, 81°43'19" W; thence west back to origin.
27. 3rd Weekend of November.	Tavares Fall Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
28. 2nd Saturday of December.	St. Johns River Christmas Boat Parade.	St. Johns River Christmas Boat Parade, Inc.	St. Johns River, Deland, Florida; Whitehair Bridge, Deland to Lake Beresford.
29. 2nd Saturday of December.	Christmas Boat Parade (Daytona Beach/Halifax River).	Halifax River Yacht Club	Daytona Beach, Florida; Halifax River from Seabreeze Bridge to Halifax Harbor Marina.
(e) COTP Zone Savannah; Special Local Regulations			
1. May, 2nd weekend, Sunday.	Blessing of the Fleet—Brunswick.	Knights of Columbus—Brunswick.	Brunswick River from the start of the East branch of the Brunswick River (East Brunswick River) to the Golden Isles Parkway Bridge.
2. 3rd full weekend of July.	Augusta Southern Nationals Drag Boat Races.	Augusta Southern Nationals.	Savannah River, Augusta, Georgia, from the U.S. Highway 1 (Fifth Street) Bridge at mile 199.5 to Eliot's Fish Camp at mile 197.
3. Last weekend of September.	Ironman 70.3	Ironman	All waters of the Savannah River encompassed within the following points: Starting at Point 1 in position 33°28'44" N, 81°57'53" W; thence northeast to Point 2 in position 33°28'50" N, 81°57'50" W; thence southeast to Point 3 in position 33°27'51" N, 81°55'36" W; thence southwest to Point 4 in position 33°27'47" N, 81°55'43" W; thence northwest back to origin.
4. 1st Saturday after Thanksgiving Day in November.	Savannah Harbor Boat Parade of Lights and Fireworks.	Westin Resort, Savannah.	Savannah River, Savannah Riverfront, Georgia, Talmadge bridge to a line drawn at 146 degrees true from Dayboard 62.
5. 2nd Saturday of November.	Head of the South Regatta.	Augusta Rowing Club	Savannah River, Augusta, Georgia; All waters within a moving zone, beginning at Daniel Island Pier in approximate position 32°51'20" N, 079°54'06" W, South along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49'20" N, 079°53'49" W, South along the coast of Mt. Pleasant, SC, to Charleston Harbor Resort Marina, in approximate position 32°47'20" N, 079°54'39" W. There will be a temporary Channel Closer from 0730 to 0815 on June 1, 2013 between Wando River Terminal Buoy 3 (LLNR 3305), and Wando River Terminal Buoy 5 (LLNR 3315). The zone will at all times extend 75 yards in front of the lead safety vessel preceding the first race participants; 75 yards behind the safety vessel trailing the last race participants; and at all times extending 100 yards on either side of the race participants and safety vessels.
(f) COTP Zone Charleston; Special Local Regulations			
1. 2nd and 3rd weekend of April.	Charleston Race Week	Sperry Top-Sider	Charleston Harbor and Atlantic Ocean, South Carolina, All waters encompassed within an 800 yard radius of position 32°46'39" N, 79°55'10" W, All waters encompassed within a 900 yard radius of position 32°45'48" N, 79°54'46" W, All waters encompassed within a 900 yard radius of position 32°45'44" N, 79°53'32" W.
2. 1st week of May	Low Country Splash	Logan Rutledge	Wando River, Cooper River, Charleston Harbor, South Carolina, including the waters of the Wando River, Cooper River, and Charleston Harbor from Daniel Island Pier, in approximate position 32°51'20" N, 079°54'06" W, south along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49'20" N, 079°53'49" W, south along the coast of Mt. Pleasant, South Carolina, to Charleston Harbor Resort Marina, in approximate position 32°47'20" N, 079°54'39" W, and extending out 150 yards from shore.
3. 2nd week of June	Beaufort Water Festival	City of Beaufort	Atlantic Intracoastal Waterway, Bucksport, South Carolina; All waters of the Atlantic Intracoastal Waterway encompassed within the following points; starting at point 1 in position 33°39'11.5" N, 079°05'36.8" W; thence west to point 2 in position 33°39'12.2" N, 079°05'47.8" W; thence south to point 3 in position 33°38'39.5" N, 079°05'37.4" W; thence east to point 4 in position 33°38'42.3" N, 79°05'30.6" W; thence north back to origin.
4. 3rd week of September	Swim Around Charleston	Kathleen Wilson	Wando River, main shipping channel of Charleston Harbor, Ashley River, Charleston, South Carolina; A moving zone around all waters within a 75-yard radius around Swim Around Charleston participant vessels that are officially associated with the swim. The Swim Around Charleston swimming race consists of a 10-mile course that starts at Remley's Point on the Wando River in approximate position 32°48'49" N, 79°54'27" W, crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50'14" N, 80°01'23" W.
5. 2nd week of November	Head of the South	Augusta Rowing Club	Upper Savannah River mile marker 199 to mile marker 196, Georgia.
6. 2nd week December ...	Charleston Harbor Christmas Parade of Boats.	City of Charleston	Charleston harbor, South Carolina, from Anchorage A through Bennis Reach, Horse Reach, Hog Island Reach, Town Creek Lower Reach, Ashley River, and finishing at City Marina.

■ 3. Add § 100.702 to read as follows:

§ 100.702 Special Local Regulations; Marine Events Within the Captain of the Port Miami.

The following regulations apply to the marine events listed in Table 1 of this section. These regulations will be effective annually for the duration listed in Table 1. The Coast Guard will notify the maritime community of exact dates and times each regulation will be in effect and the nature of each event (*e.g.*, location, number of participants, type of vessels involved, etc.) through a Notice of Enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

(a) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* The term “Designated Representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, others operating Coast Guard vessels, and federal, state, and local

officers designated by or assisting the Captain of the Port (COTP) Miami in the enforcement of the regulated areas.

(2) *Spectators.* All persons and vessels not registered with the event sponsor as participants.

(b) *Event Patrol.* The Coast Guard may assign an event patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The event patrol and Patrol Commander may be contacted on VHF Channel 16.

(c) *Special Local Regulations.* (1) The COTP Miami or Designated Representative may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in removal from the area, citation for failure to comply, or both.

(2) The COTP Miami or Designated Representative may terminate the event,

or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) Only event sponsor designated participants and official patrol vessels are allowed to enter the regulated area, unless otherwise authorized by the COTP Miami or Designated Representative.

(4) Spectators may request permission from the COTP Miami or Designated Representative to enter, transit, remain within, or anchor in the regulated area. If permission is granted, spectators must abide by the directions of the COTP Miami or a Designated Representative.

(c) The COTP Miami or Designated Representative may delay or terminate any event in this subpart at any time to ensure safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation, or participant behavior.

TABLE TO § 100.702—SPECIAL LOCAL REGULATIONS; MARINE EVENTS WITHIN THE CAPTAIN OF THE PORT MIAMI [Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
1. One weekend (Friday, Saturday, and Sunday) in May. <i>Time (Approximate):</i> 8 a.m. to 7:30 p.m.	Stuart Sailfish Regatta (Boat Race). <i>Sponsor:</i> The Stuart Sailfish Regatta, Inc.	Stuart, FL	<i>Location:</i> All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within a line connecting the following points, with the exception of the spectator area: Starting at Point 1 in position 27°12'47" N, 80°11'43" W; thence southeast to Point 2 in position 27°12'22" N, 80°11'28" W; thence northeast to Point 3 in position 27°12'35" N, 80°11'00" W; thence northwest to Point 4 in position 27°12'47" N, 80°11'04" W; thence northeast to Point 5 in position 27°13'05" N, 80°11'01" W; thence southeast back to origin.
3. One weekend (Friday, Saturday, and Sunday) in May. <i>Time (Approximate):</i> 10 a.m. to 5 p.m.	Miami Beach Air and Sea Show. <i>Sponsor:</i> The City of Miami Beach.	Miami Beach, FL.	<i>Location:</i> All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 25° 47'22" N, 080° 6'55" W; thence southwest to Point 2 in position 25° 45' 40" N, 080° 7'16" W; thence northwest to Point 3 in position 25°45'50" N, 080°07'49" W; thence north to Point 4 in position 25°47'56" N, 080°07'30" W; thence back to the origin at Point 1.
4. One weekend (Friday, Saturday, and Sunday) in May. <i>Time (Approximate):</i> 9 a.m. to 6 p.m.	Fort Lauderdale Air Show. <i>Sponsor:</i> The City of Fort Lauderdale.	Fort Lauderdale, FL.	<i>Location:</i> All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 26°11'01" N 080° 05'42" W; thence due east to Point 2 in position 26°11'01" N 080°05'00" W; thence south west to Point 3 in position 26° 05'42" N 080° 05'35" W; thence west to Point 4 in position 26° 05'42" N 080° 06'17" W; thence following the shoreline north back to the point of origin.
5. One weekend day (Saturday or Sunday) in September. <i>Time (Approximate):</i> 6 a.m. to 10 a.m.	Publix Escape to Miami Triathlon. <i>Sponsor:</i> Life Time Fitness Triathlon Series, LLC.	Miami, FL	<i>Location:</i> All waters of Biscayne Bay, east of Margaret Pace Park, Miami, FL encompassed within a line connecting the following points: Starting at Point 1 in position 25°47'40" N, 80°11'07" W; thence northeast to Point 2 in position 25°48'13" N, 80°10'48" W; thence southeast to Point 3 in position 25°47'59" N, 80°10'34" W; thence south to Point 4 in position 25°47'52" N, 80°10'34" W; thence southwest to Point 5 in position 25°47'33" N, 80°11'07" W; thence north back to origin.
6. One weekend (Saturday, and Sunday) in October. <i>Time (Approximate):</i> 9 a.m. to 6 p.m.	Columbus Day Regatta. <i>Sponsor:</i> Columbus Day Regatta, Inc.	Miami, FL	<i>Location:</i> All waters of Biscayne Bay encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 25°43'24" N 080°12'30" W; thence east to Point 2 in position 25°43'24" N 080°10'30" W; thence south to Point 3 in position 25°33'00" N 080°11'30" W; thence west to Point 4 in position 25°33'00" N 080°15'54" W; thence north west to point 5 in position 25°40'00" N 080°15'00" W; thence back to the origin at Point 1.
7. One weekend day (Saturday or Sunday) in October. <i>Time (Approximate):</i> 6 a.m. to 11 a.m.	Ironman 70.3 (Swim Event). <i>Sponsor:</i> Miami Tri Events, LLC.	Miami, FL	<i>Location:</i> All waters of Biscayne Bay located east of Bayfront Park and encompassed within a line connecting the following points: Starting at Point 1 in position 25°46'44" N, 080°11'00" W; thence southeast to Point 2 in position 25°46'24" N, 080°10'44" W; thence southwest to Point 3 in position 25°46'18" N, 080°11'05" W; thence north to Point 4 in position 25°46'33" N, 080°11'05" W; thence northeast back to origin.
8. One weekend Saturday, and Sunday in November. <i>Time (Approximate):</i> 8 a.m. to 4 p.m.	P1 Fort Lauderdale Grand Prix of the Seas. <i>Sponsor:</i> Powerboat P1 USA LLC.	Fort Lauderdale, FL.	<i>Location:</i> All waters of the Atlantic Ocean contained within a line connecting the following points: beginning at Point 1 in position 26°6'21" N, 080°5'51" W; thence west to Point 2 in position 26°6'21" N, 080°6'13" W; thence north to Point 3 in position 26°6'57" N, 080°6'13" W; thence east to Point 4 in position 26°6'57" N, 080°5'52" W, thence back to origin at point 1.
9. One weekend day (Friday, Saturday or Sunday) in December. <i>Time (Approximate):</i> 6 p.m. to 10 p.m.	Boynton Beach & Delray Beach Holiday Boat Parade. <i>Sponsor:</i> The Boynton Beach CRA.	Boynton Beach, FL. Delray Beach, FL.	<i>Location:</i> All waters within a moving zone that will begin at Boynton Inlet and end at the C-15 Canal, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.

TABLE TO § 100.702—SPECIAL LOCAL REGULATIONS; MARINE EVENTS WITHIN THE CAPTAIN OF THE PORT MIAMI—
Continued
[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
10. One weekend day (Friday, Saturday or Sunday) in December. <i>Time (Approximate)</i> : 4:30 p.m. to 9:30 p.m.	Palm Beach Holiday Boat Parade. <i>Sponsor</i> : Marine Industries Association of Palm Beach County, Inc.	Palm Beach, FL.	<i>Location</i> : All waters within a moving zone that will begin at Lake Worth Daymarker 28 in North Palm Beach and end at Loxahatchee River Daymarker 7 east of the Glynn Mayo Highway Bridge in Jupiter, FL, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
11. One weekend day (Friday, Saturday or Sunday) in December. <i>Time (Approximate)</i> : 5 p.m. to 10 p.m.	Miami Outboard Holiday Boat Parade. <i>Sponsor</i> : The Miami Outboard Club.	Miami, FL	<i>Location</i> : All waters within a moving zone that will transit as follows: The marine parade will begin at the Miami Outboard Club on Watson Island, head north around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. This will include a buffer zone extending to 50 yards ahead of the lead vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
12. One weekend day (Friday, Saturday or Sunday) in December. <i>Time (Approximate)</i> : 1:30 p.m. to 12:30 a.m.	Seminole Hard Rock Winterfest Boat Parade. <i>Sponsor</i> : Winterfest, Inc.	Fort Lauderdale, FL.	<i>Location</i> : All waters within a moving zone that will begin at Cooley's Landing Marina and end at Lake Santa Barbara, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
13. One weekend day (Friday, Saturday or Sunday) in December. <i>Time (Approximate)</i> : 6 p.m. to 10 p.m.	City of Pompano Beach Holiday Boat Parade. <i>Sponsor</i> : The Greater Pompano Beach Chamber of Commerce.	Pompano Beach, FL.	<i>Location</i> : All waters within a moving zone that will begin at Lake Santa Barbara and head north on the Intracoastal Waterway to end at the Hillsboro Bridge, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.

§§ 100.723, 100.726, and 100.729
[Removed]

■ 4. Remove § 100.723, § 100.726, and § 100.729.

Dated: September 23, 2019.

J.F. Burdian,

Captain, U.S. Coast Guard, Captain of the Port Sector Miami.

[FR Doc. 2019-21297 Filed 10-1-19; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2019-0282; FRL-10000-59-OAR]

RIN 2060-AM75

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopen comment period.

SUMMARY: On July 26, 2019, the Environmental Protection Agency (EPA) proposed a rule titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." The EPA is reopening the comment period on the proposed rule that closed on September 24, 2019. The comment period will remain open until November 1, 2019 to allow additional time for stakeholders to review and comment on the proposal.

DATES: The public comment period for the proposed rule published in the **Federal Register** on July 26, 2019 (84 FR 36304), is being reopened. Written comments must be received on or before November 1, 2019.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2019-0282, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- *Email:* a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2019-0282 in the subject line of the message.

- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2019-0282.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2019-0282, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. Do not submit information that you consider to

be Confidential Business Information (CBI) or otherwise protected through <https://www.regulations.gov/> or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any

digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA's Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2019-0282.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Elineth Torres, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4347; fax number: (919) 541-4991; and email address: torres.elineth@epa.gov.

SUPPLEMENTARY INFORMATION: To allow for additional time for stakeholders to provide comments, the EPA has decided to reopen the public comment period until November 1, 2019.

Dated: September 25, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019-21219 Filed 10-1-19; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 9, 13, 16, 19, 22, 25, and 52

[FAR Case 2018-004; Docket No. FAR-2018-0011, Sequence No. 1]

RIN 9000-AN65

Federal Acquisition Regulation: Increased Micro-Purchase and Simplified Acquisition Thresholds; 2018-004

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 and several sections of the NDAA for FY 2018 that increase the micro-purchase threshold (MPT), increase the simplified acquisition threshold (SAT), and clarify certain procurement terms, as well as align some non-statutory thresholds with the MPT and SAT.

DATES: Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before December 2, 2019 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2018-004 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2018-004". Select the link "Comment Now" that corresponds with "FAR Case 2018-004." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2018-004" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat

Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR case 2018-004" in all correspondence related to this case. All comments received 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 <http://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. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or michaelo.jackson@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite "FAR Case 2018-004".

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement section 217(b) of the NDAA for FY 2017 (Pub. L. 114-328) and sections 805, 806, and 1702(a) of the NDAA for FY 2018 (Pub. L. 115-91). The proposed rule will also replace non-statutory, stated dollar thresholds that are intended to correspond with the MPT and SAT, with the text "micro-purchase threshold" and "simplified acquisition threshold." Referencing some stated thresholds by name instead of by a specific dollar value will ease maintenance of regulations, given the likelihood of future changes to the threshold amounts. Text clarifying the use of the approval thresholds, based on the increase of the SAT, for sole source justifications executed under the simplified procedures for certain commercial items has been added to subpart 13.5.

Section 217(b) amends 41 U.S.C. 1902 to increase the MPT for acquisitions from institutions of higher education or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, from \$3,500 to \$10,000, or a higher amount as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. Chapter 75, an internal institutional risk assessment, or State law.

Section 806 increases the MPT in 41 U.S.C. 1902(a) to \$10,000.

Section 805 increases the SAT to \$250,000.

Section 1702(a) amends section 15(j)(1) of the Small Business Act (15 U.S.C. 644(j)(1)) to replace specific dollar thresholds with the terms “micro-purchase threshold” and “simplified acquisition threshold.”

II. Discussion and Analysis

This rule proposes to amend the FAR, as follows:

- At FAR Part 2, to—
 - Replace “\$3,500” with “\$10,000” and add an exception to the MPT for acquisitions from institutions of higher education or related or affiliated nonprofit entities, nonprofit research organizations, or independent research institutes, at the definition of “micro-purchase threshold” and,
 - Replace “\$150,000” with “\$250,000” at the definition of “simplified acquisition threshold.”
 - At FAR Part 3, to replace “simplified acquisition threshold” with “\$150,000” at 3.502–3 to conform to 3.502–2(i).
 - At FAR part 9, to replace “\$3,500” with “\$10,000” as the Federal tax delinquency threshold, at 9.406–2(b)(1)(v) replaces “\$3,500” with “the threshold at FAR 9.104–5(a)(2)” and at 9.407–2(a)(7) replaces “\$3,500” with “the threshold at FAR 9.104–5(a)(2)”. When an offeror indicates in its representations and certifications a delinquency in excess of the threshold, a contracting officer must report that information to the agency’s suspending or debarring official, and, a suspending or debarring official may suspend or debar a contractor for delinquent Federal taxes in excess of the threshold.
 - At FAR part 13, to replace “\$3,500” with “the micro-purchase threshold” and “\$150,000” with “the simplified acquisition threshold” when addressing the thresholds for acquisitions that are reserved exclusively for small business concerns;
 - At FAR 13.005, List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold, there is an impact of this increase in the SAT. This list was first required by section 4101 of FASA (Pub. L. 103–355), now codified at 41 U.S.C. 1906. FASA sections 4102–4104 made certain laws inapplicable below the SAT, and made other laws inapplicable below \$100,000. At the time, these two thresholds were of equivalent value, so there was no problem with listing all of them at FAR 13.005. Intervening escalation raised all of these thresholds to \$150,000. However, now that the SAT has been increased to \$250,000, those thresholds that were set at a dollar value rather than at the SAT, are not increasing to

\$250,000. Therefore, the following laws should be removed from the list at FAR 13.005: 13.005(a)(1), (a)(2), (a)(3), and (a)(5);

- At FAR 13.501(a)(2) to clarify the procedures to be used for justifications of other than full and open competition, when the simplified acquisition threshold is raised, *e.g.*, for contingency operations.
 - At FAR part 16, to replace “\$150,000” with “the simplified acquisition threshold” when addressing the maximum threshold for fixed-ceiling-price contracts with retroactive price redetermination and the maximum threshold for firm-fixed-price, level-of-effort term contracts, without higher level approval.
 - At FAR part 19, to replace “\$3,500” with “the micro-purchase threshold” and/or “\$150,000” with “the simplified acquisition threshold” when addressing set-aside requirements, and inserting the clause for FAR 52.219–14, Limitations on Subcontracting.
 - At FAR part 22, specifically, 22.1803, replace “the simplified acquisition threshold” with “\$150,000.”
 - At FAR part 25, to replace “\$3,500” with “10,000” as the “significant transaction” amount an offeror may not exceed when engaging with Iran’s Revolutionary Guard Corps or any of its officials, agents, or affiliates.
 - At FAR part 52, to—
 - Replace “\$3,500” with “the threshold at 9.104–5(a)(2)” at FAR 52.209–5(a)(1)(i)(D) and FAR 52.212–3(h)(4);
 - Replace “\$150,000” with the “simplified acquisition threshold” as the subcontractor flow-down threshold for FAR 52.203–16, Preventing Personal Conflicts of Interest;
 - Replace “\$3,500” with “the micro-purchase threshold” as the threshold an offer must exceed, unless otherwise required, for the offeror to be required to provide its unique entity identifier, as stated in paragraph (j) of FAR provision 52.212–1, Instruction to Offerors—Commercial Items;
 - Replace the threshold an offeror must certify, in paragraph (o)(2)(iii) of FAR 52.212–3, and FAR 52.225–25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications, it has not exceeded when engaging with Iran’s Revolutionary Guard Corps or any of its officials, agents, or affiliates. The clause title of FAR 52.225–25 is also corrected. The threshold will be that at FAR 25.703–2(a)(2);
 - Replace “\$150,000” with “the simplified acquisition threshold” as the threshold a subcontract award must

exceed in order for a contractor to be required to keep records on the corresponding subcontract solicitation, as identified in FAR clause 52.219–9, Small Business Subcontracting Plan and its Alternate IV.

III. Expected Impact of the Proposed Rule and Proposed Cost Savings

This rule impacts any business, large or small, that prepares quotes exceeding \$3,500 (\$5,000 for DoD) and not exceeding \$10,000 (or higher for select educational institutions); proposals exceeding \$150,000 and not exceeding \$250,000; and proposals exceeding \$300,000 and not exceeding \$500,000, in support of humanitarian or peacekeeping operations. This rule does not add any new solicitation provisions or contract clauses. Rather, it reduces burden on contractors by increasing the thresholds at which various regulatory burdens apply.

Increasing the MPT and SAT means additional awards could be made under the MPT and additional awards could be made under the SAT. The additional awards at or below the MPT would not require provisions or clauses, except as provided in FAR 13.202 and FAR 32.1110, and the additional awards at or below the SAT would be awarded without provisions and clauses which are prescribed only above the SAT. In addition to including fewer regulations in applicable awards, the proposed rule would allow for more awards based on quotes in lieu of a formal proposal, thereby reducing the contractor’s bid and proposal costs. Costs associated with contractor financing could also be reduced by increasing the number of micro-purchases, for which the Governmentwide purchase card is the preferred method of purchase and payment (see FAR 13.201(b)).

To determine the dollar amounts and entities affected, data was pulled from the Federal Procurement Data System (FPDS) from fiscal years 2015–2018. For the micro-purchase value change, there was an annual average in total impacted contract awards of \$2,442,317 for small businesses and \$1,359,916 for other than small businesses for contracts with values exceeding \$3,500 (\$5,000 for DOD), but less than or equal to \$10,000 (or higher, for educational institutions). For the simplified acquisition threshold change, there was an annual average in total impacted contract awards of \$300,073,039 for small businesses and \$161,715,144 for other than small businesses for contracts with values exceeding \$150,000, but less than or equal to \$250,000 (from \$300,000 to \$500,000 for contingency, humanitarian, or peacekeeping awards).

Commercial item awards, as well as orders placed through indefinite-quantity contract orders and other large contracting schedule orders, were removed from this calculation to determine the cost reduction on offerors and contractors. Commercial items were removed from this calculation because the simplified threshold for commercial item awards is set at \$7 million, so the increased SAT threshold would not impact compliance or business procedures for contractors with awards conducted through commercial item procedures.

To calculate the burden reduction on Government by raising these thresholds,

indefinite-quantity contracts were included, as the threshold changes would impact Government acquisition procedures.

The Federal Acquisition Streamlining Act (FASA) made a number of laws inapplicable to items procured under the SAT. This was meant to save both the Government and service providers money while also expediting the entire contract process. When finalized, this rule will decrease the number of regulatory requirements agencies need to include in awards.

Because this rule will reduce bid and proposal costs and other administrative burdens and since it does not implement any new requirements on

offerors, DoD, GSA, and NASA believe this rule to be deregulatory.

Please see the Regulatory Cost Analysis narrative for an in-depth discussion of data used to calculate the estimated reduced burden on contractors and the Government. To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at www.regulations.gov, search for “FAR Case 2018–004,” click “Open Docket,” and view “Supporting Documents.” The following is a summary of the estimated public and Government cost savings calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

Summary	Public	Government	Total
Present Value Costs	–\$662,413,271	–\$2,216,678,757	–\$2,879,092,029
Annualized Costs	–\$46,368,929	–\$155,167,513	–\$201,536,442
Annualized Value Costs (as of 2016 if Year 1 is 2019)	–\$37,850,858	–\$126,662,911	–\$164,513,770

In an attempt to quantify savings as a result of this rule, DoD, GSA, and NASA seek input from contractors that could be impacted by this rule. In addition to the Government cost savings discussed in the accompanying materials in the docket at www.regulations.gov, DoD, GSA, and NASA welcome feedback on contract proposals and contract quotes (but not quotes for a task order or delivery order) on—

1. The total bid and proposal (B&P) cost and the total number of proposals in Fiscal Year (FY) 2018 for proposals greater than \$150,000 and less than or equal to \$250,000, including the hours expended in the preparation of the proposals and personnel involved. If available, the total cost related to compliance for awards greater than \$150,000 and less than or equal to \$250,000 that could be eliminated by using simplified acquisition procedures.

2. The total B&P cost and the total number of quotes in FY 2018 for quotes less than or equal to \$150,000, including the hours expended in the preparation of the quotes and personnel involved.

3. The total B&P cost and the total number of quotes in FY18 for quotes greater than \$3,500 and less than or equal to \$10,000, including the hours expended in the preparation of the quotes and personnel involved. If available, the total cost related to compliance for awards greater than \$3,500 and less than or equal to \$10,000 that could be eliminated by conducting a micro-purchase.

4. The total B&P cost and the total number of quotes in FY18 for quotes less than or equal to \$3,500, including

the hours expended in the preparation of the quotes and personnel involved.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

The rule applies to contracts at or below the simplified acquisition threshold, and to contracts for commercial items, including COTS items. However, it does not add any new solicitation provisions or contract clauses, and it reduces burden on contractors by increasing the thresholds at which various regulatory burdens apply.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is an economically significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

VI. Congressional Review Act

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will, if finalized, be transmitted to the Congress and to the Comptroller General for review in accordance with such provisions.

VII. Executive Order 13771

This rule is subject to E.O. 13771 because this rule is an economically significant regulatory action under E.O. 12866. As explained in section III of this preamble and in the accompanying documentation available in the docket at www.regulations.gov, DoD, GSA, and NASA believe the rule is deregulatory and seek public input on this preliminary determination as well as information that can better quantify savings.

VIII. Regulatory Flexibility Act

DoD, GSA, and NASA expect this rule to have a positive significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to implement a section of the NDAA for Fiscal Year (FY) 2017 and several sections of the NDAA for FY 2018 that increase the MPT, increase the SAT, clarify certain procurement terms, as well as align non-statutory thresholds with the MPT and SAT.

The objective of the rule is to implement section 217(b) of the NDAA for FY 2017 (Pub. L. 114–328) and sections 805, 806, and

1702(a) of the NDAA for FY 2018 (Pub. L. 115–91), as well as align non-statutory, stated dollar thresholds that are intended to correspond with the MPT and SAT, with word-based thresholds to ensure continued alignment with the current increase to these thresholds and any future change to the threshold amounts. DoD, GSA, and NASA expect this rule to have a positive significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

According to data from the Federal Procurement Data System (FPDS), there were 505 contracts awarded in FY 2018 with a value exceeding \$3,500 (\$5,000 for DOD), but less than or equal to \$10,000 wherein contractors would have a change in compliance requirements. Of the 505 new awards, 358 (71 percent) of these actions were awarded to 198 unique small business entities.

Data from FPDS also indicates that in FY 2018, there were no (0) small business entities that had additional contract actions for educational or related institutions for contracts with a value exceeding \$10,000, but less than or equal to \$15,000 (equivalent to the upper bound of the expected micro-purchase value for these types of institutions) wherein contractors would have a change in compliance requirements.

Data from FPDS also indicates there were 3,653 new contracts awarded in FY 2018 with a value exceeding \$150,000, but less than or equal to \$250,000 wherein contractors would have a change in compliance requirements. Of these, 2,621 (72 percent) of these actions were awarded to 1,680 unique small business entities.

As mentioned previously, commercial items were removed from this calculation because the simplified threshold for commercial item awards is set at \$7 million, so the increased SAT threshold would not impact compliance or business procedures for contractors with awards conducted through commercial item procedures.

Data from the FPDS further indicates that for contingency, humanitarian, or peacekeeping contract actions, there were 11 new total contracts awarded in FY 2018 with a value exceeding \$300,000 but less than or equal to \$500,000 wherein contractors would have a change in compliance requirements. Of these, 4 (36 percent) of these actions were awarded to 4 unique small business entities.

This rule will also change the small-business set aside threshold under FAR 19.502; instead of being from greater than \$3,500 to less than or equal to \$150,000, the threshold will be from greater than \$10,000 to less than or equal to \$250,000. This is expected to increase the number of small business entities able to do business with the Government; for contracts affected by this threshold change, (please see full regulatory cost analysis for explanation of excepted contract types), in FY 2018, there were 3,653 records exceeding \$150,000 and less than or equal to \$250,000, while there were 505 records exceeding \$3,500 (\$5,000 for DOD) and less than or equal to \$10,000.

As of September 30, 2017, there were 637,791 active entity registrations in SAM. Of

those active entity registrations, 452,310 (71 percent) completed all four modules of the registration, in accordance with the definition “Registered in the System for Award Management (SAM)” at FAR 52.204–7(a), including Assertions (where they enter their size metrics and select their NAICS Codes) and Reqs & Certs (where they certify to the information they provided and the size indicator by NAICS).

Of the possible 452,310 active SAM entity registrations, 338,207 (75 percent) certified to meeting the size standard of small for their primary NAICS Code. Therefore, this rule may be beneficial to 338,207 small business entities that submit solicitation responses that may now fall under the MPT or SAT and have streamlined procedures as a result of this rule.

The proposed rule applies to all entities who do business with the Federal Government.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements. The rule reduces burden on contractors by increasing the thresholds at which various regulatory burdens begin to apply. The proposed rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the proposed rule that would meet the requirements of the applicable requirement.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–004), in correspondence.

IX. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 9, 13, 16, 19, 22, 25 and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 9, 13, 16, 19, 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 9, 13, 16, 19, 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

- 2. Amend section 2.101, in paragraph (b) by—
- a. In the definition “Micro-purchase threshold” removing from the introductory text “\$3,500” and adding “\$10,000” in its place, removing from paragraph (2) the word “and” at the end of the sentence, removing from paragraph (3)(ii) “States.” and adding “States; and” in its place, and adding paragraph (4); and
- b. In the definition “Simplified acquisition threshold” removing from the introductory text “\$150,000” and adding “\$250,000” in its place, and removing from paragraph (2) “\$300,000” and adding “\$500,000” in its place.

The addition reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

Micro-purchase threshold * * *

(4) For acquisitions of supplies or services from institutions of higher education (20 U.S.C. 1001(a)) or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes—

(i) \$10,000; or

(ii) A higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or State law.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

* * * * *

3.502–3 [Amended]

■ 3. Amend section 3.502–3 by removing “the simplified acquisition threshold” and adding “\$150,000” in its place.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.104–5 [Amended]

■ 4. Amend section 9.104–5 by removing from paragraph (a)(2) “\$3,500” and adding “\$10,000” in its place.

9.406-2 [Amended]

■ 5. Amend section 9.406-2 by removing from paragraph (b)(1)(v) “\$3,500” and adding “the threshold at 9.104-5(a)(2)” in its place.

9.407-2 [Amended]

■ 6. Amend section 9.407-2 by removing from paragraph (a)(7) “\$3,500” and adding “the threshold at 9.104-5(a)(2)” in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 7. Amend section 13.003 by revising paragraph (b)(1) to read as follows:

13.003 Policy.

* * * * *

(b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold are reserved exclusively for small business concerns and shall be set aside (see 19.000, 19.203, and subpart 19.5).

* * * * *

■ 8. Amend section 13.005 by revising paragraph (a) to read as follows:

13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold pursuant to 41 U.S.C. 1905:

(1) 41 U.S.C. 8102(a)(1) (Drug-Free Workplace), except for individuals.

(2) 10 U.S.C. 2306(b) and 41 U.S.C. 3901(b) (Contract Clause Regarding Contingent Fees).

(3) 10 U.S.C. 2313 and 41 U.S.C. 4706 (Authority to Examine Books and Records of Contractors).

(4) 10 U.S.C. 2402 and 41 U.S.C. 4704 (Prohibition on Limiting Subcontractors Direct Sales to the United States).

(5) 15 U.S.C. 631 note (HUBZone Act of 1997), except for 15 U.S.C. 657a(b)(2)(B), which is optional for the agencies subject to the requirements of the Act.

(6) 31 U.S.C. 1354(a) (Limitation on use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

(7) 22 U.S.C. 2593e (Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States). (The requirement at 22 U.S.C. 2593e(c)(3)(B) to provide a certification does not apply).

* * * * *

13.501 [Amended]

■ 9. Amend section 13.501 by removing from paragraph (a)(2)(i) “\$150,000” and adding “the simplified acquisition threshold” in its place, and removing from paragraph (a)(2)(ii) “\$700,000” and adding “\$700,000 or the thresholds in paragraph (1) of the definition of simplified acquisition threshold in FAR 2.101,” in its place.

PART 16—TYPES OF CONTRACTS

16.206-2 [Amended]

■ 10. Amend section 16.206-2 by removing from the introductory text “\$150,000” and adding “the simplified acquisition threshold” in its place.

16.206-3 [Amended]

■ 11. Amend section 16.206-3 by removing from paragraph (a) “\$150,000” and adding “the simplified acquisition threshold” in its place.

16.207-3 [Amended]

■ 12. Amend section 16.207-3 by removing from paragraph (d) “\$150,000” and adding “the simplified acquisition threshold” in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 13. Amend section 19.203 by revising paragraph (b) to read as follows:

19.203 Relationship among small business programs.

* * * * *

(b) At or below the simplified acquisition threshold. For acquisitions of supplies or services that have an anticipated dollar value exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the requirement at 19.502-2(a) to exclusively reserve acquisitions for small business concerns does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.

* * * * *

19.502-1 [Amended]

■ 14. Amend section 19.502-1 by—
■ a. Removing from paragraph (b) “of \$3,500 or less (\$20,000 or less for acquisitions as described in 13.201(g)(1))” and adding “valued at or below the micro-purchase threshold” in its place, and
■ b. Removing “Part 8” in paragraph (b) and adding “part 8” in its place.

■ 15. Amend section 19.502-2 by—
■ a. Revising the second sentence in paragraph (a), and

■ b. Removing from paragraph (b) “\$150,000” and adding “the simplified acquisition threshold” in its place.
The revision reads as follows:

19.502-2 Total small business set-asides.

(a) * * * Each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold, but not over the simplified acquisition threshold, is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.

* * *

* * * * *

19.508 [Amended]

■ 16. Amend section 19.508 by removing from paragraph (e) “\$150,000” and adding “the simplified acquisition threshold” in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1803 [Amended]

■ 17. Amend section 22.1803 by removing from the introductory text “the simplified acquisition threshold” and adding “\$150,000” in its place.

PART 25—FOREIGN ACQUISITION

25.703-2 [Amended]

■ 18. Amend section 25.703-2 by removing from paragraph (a)(2) “\$3,500” and adding “\$10,000” in its place.

25.703-4 [Amended]

■ 19. Amend section 25.703-4 by removing from paragraphs (c)(5)(ii), (c)(7)(iii), and (c)(8)(iii) “\$3,500” and adding “the threshold at 25.703-2(a)(2)” in its place, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 20. Amend section 52.203-16 by revising the date of the clause and removing from paragraph (d)(1) “\$150,000” and adding “the simplified acquisition threshold” in its place.

The revision reads as follows:

52.203-16 Preventing Personal Conflicts of Interest.

* * * * *

Preventing Personal Conflicts of Interest (DATE)

* * * * *

■ 21. Amend section 52.209–5 by revising the date of the provision and removing from paragraph (a)(1)(i)(D) introductory text “\$3,500” and adding “the threshold at 9.104–5(a)(2)” in its place.

The revision reads as follows:

52.209–5 Certification Regarding Responsibility Matters.

* * * * *

Certification Regarding Responsibility Matters (DATE)

* * * * *

■ 22. Amend section 52.212–1 by revising the date of the provision and removing from paragraph (j) “\$3,500, and offers of \$3,500” and adding “the micro-purchase threshold, and offers at the micro-purchase threshold” in its place.

The revision reads as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (DATE)

* * * * *

■ 23. Amend section 52.212–3 by—
 ■ (a) Revising the date of the provision;
 ■ (b) Removing from paragraph (h)(4) introductory text “\$3,500” and adding “the threshold at 9.104–5(a)(2)” in its place; and

■ (c) Removing from paragraph (o)(2)(iii) “\$3,500” and adding “the threshold at 25.703–2(a)(2)” in its place.

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (DATE)

* * * * *

■ 24. Amend section 52.212–5 by—
 ■ (a) Revising the date of the clause;
 ■ (b) Removing from paragraph (b)(17)(i) “(Aug 2018)” and adding “(DATE); and
 ■ (c) Removing from paragraph (b)(17)(v) “(Aug 2018)” and adding “(DATE) in its place.

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DATE)

* * * * *

■ 25. Amend section 52.219–9 by—
 ■ a. Revising the date of the clause;
 ■ b. Removing from paragraph (d)(11)(iii) “\$150,000” and adding “the

simplified acquisition threshold” in its place;

■ c. Revising the date of Alternate IV; and

■ d. In Alternate IV, removing from (d)(11)(iii) “\$150,000” and adding “the simplified acquisition threshold” in its place.

The revisions read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (DATE)

* * * * *

Alternate IV (DATE). * * * *

* * * * *

■ 26. Amend section 52.225–25 by revising the provision title and date, and removing from paragraph (c)(3) “\$3,500” and adding “the threshold at 25.703–2(a)(2)” in its place.

The revisions read as follows:

52.225–25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.

* * * * *

Prohibition on Contracting With Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications (DATE)

* * * * *

[FR Doc. 2019–20796 Filed 10–1–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, 15, 16, and 37

[FAR Case 2018–016; Docket No. FAR–2018–0016, Sequence No. 1]

RIN 9000–AN75

Federal Acquisition Regulation: Lowest Price Technically Acceptable Source Selection Process

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which

specifies the criteria that must be met in order to include lowest price technically acceptable (LPTA) source selection criteria in a solicitation; and requires procurements predominantly for the acquisition of certain services and supplies to avoid the use of LPTA source selection criteria, to the maximum extent practicable.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before December 2, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–016 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2018–016”. Select the link “Comment Now” that corresponds with “FAR Case 2018–016”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2018–016” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite “FAR Case 2018–016”, in all correspondence related to this case. All comments received 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. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or michaelo.jackson@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite “FAR Case 2018–016”.

SUPPLEMENTARY INFORMATION:

I. Background

Section 880 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232, 41 U.S.C. 3701 Note) makes it the policy of the Government to avoid using Lowest Price Technically Acceptable (LPTA) source selection criteria in circumstances that would

deny the Government the benefits of cost and technical tradeoffs in the source selection process. The section requires that LPTA source selection criteria be used only when: (1) An executive agency is able to comprehensively and clearly describe the minimum requirements expressed in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers; (2) the executive agency would realize no, or minimal, value from a contract proposal exceeding the minimum technical or performance requirements set forth in the request for proposal; (3) the proposed technical approaches will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror's proposal versus a competing proposal; (4) the executive agency has a high degree of confidence that a review of technical proposals of offerors other than the lowest bidder would not result in the identification of factors that could provide value or benefit to the executive agency; (5) the contracting officer has included a justification for the use of an LPTA evaluation methodology in the contract file; and (6) the executive agency has determined that the lowest price reflects total costs, including for operations and support.

Additionally, section 880 requires that the use of LPTA source selection criteria be avoided, to the maximum extent practicable, in procurements that are predominantly for the acquisition of: information technology services; cybersecurity services; systems engineering and technical assistance services; advanced electronic testing; audit or audit readiness services; health care services and records; telecommunications devices and services; or other knowledge-based professional services; personal protective equipment; or, knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq.

II. Discussion and Analysis

This proposed rule would require contracting officers to: ensure procurements meet the criteria of section 880 before including LPTA source selection criteria in solicitations; document the contract file with a justification for the use of the LPTA source selection process, when applicable; and, to avoid, to the maximum extent practicable, the use of LPTA source selection criteria in procurements that are predominantly for the supplies and services identified

in section 880. This rule does not address the applicability of section 880 to the Federal Supply Schedules Program (Schedules Program). GSA will separately address the applicability of section 880 to the Schedules Program.

In addition, section 880 does not apply to DoD. Instead, section 813 of the NDAA for FY 2017 (10 U.S.C. 2305 Note) and section 822 of the NDAA for FY 2018 (10 U.S.C. 2305 Note) establish a similar, but not the same, set of criteria for DoD procurements to meet in order to use LPTA source selection criteria in solicitations. These sections are being implemented in a separate Defense Federal Acquisition Regulation Supplement case (2018–D010).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial items, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

The rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) are proposing to revise the Federal Acquisition Regulation (FAR) to:

- Specify the criteria that must be met in order to include lowest price technically acceptable (LPTA) source selection criteria in a solicitation; and,
- Require procurements predominantly for the acquisition of certain services or supplies to avoid the use of LPTA source selection criteria, to the maximum extent practicable.

The objective of the rule is to avoid using LPTA source selection criteria in circumstances that would deny the Government the benefits of cost and technical tradeoffs in the source selection process. The legal basis for the rule is section 880 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). The rule does not cover DoD, which has already been covered by section 813 of the NDAA for FY 2017 and section 822 of the NDAA for FY 2018.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule primarily affects internal Government requirements determination decisions, acquisition strategy decisions, and contract file documentation requirements. The Government does not collect data on the total number of solicitations issued on an annual basis that do or do not specify the use of the LPTA source selection process. However, the Federal Procurement Data System (FPDS) provides the following information for fiscal year 2018:

- Federal competitive contracts and orders awarded using FAR parts 13, 15, or 16.5 procedures. In FY 2018, the Federal Government, excluding DoD, awarded approximately 82,337 new contracts and orders using the competitive procedures of FAR 13, 15, or 16.5. This data excludes acquisitions for the supply/service categories identified in section 880(c) of the NDAA for FY 2019. Of the 82,337 contracts and orders, approximately 69 percent (or 56,622 contracts and orders) were awarded to approximately 27,029 unique small businesses. It is important to note that FPDS does not collect data on solicitations, but does collect information on competitively awarded contracts using various FAR procedures. Therefore, this data represents contracts that were awarded using LPTA and tradeoff source selection procedures.

- Federal competitive contracts and orders awarded for certain services and supplies. In FY 2018, the Federal Government, excluding DoD, awarded approximately 22,581 new contracts and orders potentially for the supplies and services identified in section 880(c) of the NDAA for FY 2019 using the competitive procedures of FAR parts 13, 15, and 16.5, of which approximately 63 percent (or 14,285 contracts and orders) were awarded to approximately 10,129 unique small businesses.

The proposed rule does not impose any Paperwork Reduction Act reporting or

recordkeeping requirements on any small entities. The rule may impact some small businesses. Some offerors may need to change the structure of their quotes or offers to conform to instructions and corresponding evaluation criteria in solicitations that use tradeoff source selection criteria, as LPTA source selection criteria is now unavailable for use in some circumstances. This impact, which represents the incremental difference between preparing a noncomplex proposal to be evaluated using LPTA criteria and preparing the additional information necessary to evaluate a proposal using tradeoff criteria, is expected to be minimal.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018-016) in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 12, 13, 15, 16, and 37

Government procurement.

William F. Clark,

Director,

Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 12, 13, 15, 16 and 37 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 13, 15, 16 and 37 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Revise section 12.203 by redesignating the text as paragraph (a)

and adding paragraph (b) to read as follows:

12.203 Procedures for solicitation, evaluation, and award.

* * * * *

(b) Contracting officers shall ensure the criteria at 15.101-2(c) are met when using the lowest price technically acceptable source selection process.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Amend section 13.106-1 by adding paragraphs (a)(2)(i) and (a)(2)(ii) to read as follows:

13.106-1 Soliciting competition.

(a) * * *

(2) * * *

(i) Except for DoD, contracting officers shall ensure the criteria at 15.101-2(c)(1)-(5) are met when using the lowest price technically acceptable source selection process.

(ii) Except for DoD, avoid using the lowest price technically acceptable source selection process to acquire certain supplies and services in accordance with 15.101-2(d).

* * * * *

■ 4. Amend section 13.106-3 by—

■ a. In paragraph (b)(3), removing “statements—” and adding “statements, when applicable—” in its place;

■ b. In paragraph (b)(3)(i), removing “; or” and adding “;” in its place;

■ c. In paragraph (b)(3)(ii), removing “.” and adding “; and”

■ d. Adding paragraph (b)(3)(iii).

The addition reads as follows:

13.106-3 Award and documentation.

* * * * *

(b) * * *

(3) * * *

(iii) Except for DoD, when using lowest price technically acceptable source selection process, justifying the use of such process.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 5. Amend section 15.101-2 by adding paragraphs (c) and (d) to read as follows:

15.101-2 Lowest price technically acceptable source selection process.

* * * * *

(c) Except for DoD, in accordance with section 880 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232, 41 U.S.C. 3701 Note), the lowest price technically acceptable source selection process shall only be used when—

(1) The agency can comprehensively and clearly describe the minimum

requirements in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers;

(2) The agency would realize no, or minimal, value from a proposal that exceeds the minimum technical or performance requirements;

(3) The agency believes the technical proposals will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror's proposal versus a competing proposal;

(4) The agency has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit to the agency;

(5) The agency determined that the lowest price reflects the total cost, including operation and support, of the product(s) or service(s) being acquired; and

(6) The contracting officer documents the contract file describing the circumstances that justify the use of the lowest price technically acceptable source selection process.

(d) Except for DoD, in accordance with section 880 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232, 41 U.S.C. 3701 Note), contracting officers shall avoid, to the maximum extent practicable, using the lowest price technically acceptable source selection process in the case of a procurement that is predominantly for the acquisition of—

(1) Information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, health care services and records, telecommunications devices and services, or other knowledge-based professional services;

(2) Personal protective equipment; or

(3) Knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq.

PART 16—TYPES OF CONTRACTS

■ 6. Amend section 16.505 by—

■ a. Removing from the end of paragraph (b)(1)(ii) “must—” and adding “shall—” in its place;

■ b. Removing from paragraph (b)(1)(ii)(D) “contract; and” and adding “contract;” in its place;

■ c. Removing from paragraph (b)(1)(ii)(E) “decision.” and adding “decision;” in its place;

■ d. Adding paragraphs (b)(1)(ii)(F) and (b)(1)(ii)(G); and

- e. Adding paragraph (b)(7)(iii).
The additions read as follows:

16.505 Ordering.

* * * * *

- (b) * * *
(1) * * *
(ii) * * *

(F) Except for DoD, ensure the criteria at 15.101–2(c)(1)–(5) are met when using the lowest price technically acceptable source selection process; and

(G) Except for DoD, avoid using the lowest price technically acceptable source selection process to acquire certain supplies and services in accordance with 15.101–2(d).

* * * * *

- (7) * * *

(iii) Except for DoD, the contracting officer shall document in the contract file a justification for use of the lowest price technically acceptable source selection process, when applicable.

* * * * *

PART 37—SERVICE CONTRACTING

- 7. Amend section 37.102 by adding paragraph (j) to read as follows:

37.102 Policy.

* * * * *

(j) Except for DoD, see 15.101–2(d) for limitations on the use of the lowest price technically acceptable source selection process to acquire certain services.

[FR Doc. 2019–20798 Filed 10–1–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 14, 15, 30, and 52

[FAR Case 2018–005; Docket No. FAR–2018–0006, Sequence No. 1]

RIN 9000–AN69

**Federal Acquisition Regulation:
Modifications to Cost or Pricing Data
Reporting Requirements**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National

Defense Authorization Act for Fiscal Year 2018 to increase the threshold for requiring certified cost or pricing data.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before December 2, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–005 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2018–005”. Select the link “Comment Now” that corresponds with “FAR Case 2018–005”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2018–005” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite “FAR Case 2018–005”, in all correspondence related to this case. All comments received 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: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or zenaida.delgado@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite “FAR Case 2018–005”.

SUPPLEMENTARY INFORMATION:

I. Background

Cost or Pricing Data: Truth in Negotiations, 10 U.S.C. 2306a, and Required cost or pricing data and certification, 41 U.S.C. 3502, require that the Government obtain certified cost or pricing data for certain contract actions listed at 15.403–4(a)(1), such as negotiated contracts, certain subcontracts and certain contract modifications. Section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 amends 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase the threshold for

requesting certified cost or pricing data from \$750,000 to \$2 million for contracts entered into after June 30, 2018.

II. Discussion and Analysis

DoD, GSA and NASA are proposing to amend the FAR to implement section 811 of the NDAA for FY 2018 to increase the threshold for requesting certified cost or pricing data from \$750,000 to \$2 million for contracts entered into after June 30, 2018.

In the case of a change or modification made to a prime contract that was entered into before July 1, 2018, the threshold for obtaining certified cost or pricing data remains \$750,000, with the following exception. Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration to reflect a \$2 million threshold for obtaining certified cost or pricing data from subcontractors. Similarly for sealed bidding, upon request by a contractor, the contracting officer shall modify the contract without requiring consideration to replace the relevant clause.

The proposed changes to the FAR are summarized in the following paragraphs.

A. Subpart 14.2, Solicitation of Bids, is revised to add the prescription for Alternate I of the clause at FAR 52.214–28, Subcontractor Certified Cost or Pricing Data-Modifications-Sealed Bidding. The Alternate I will be used in the circumstances described at FAR 14.201–7(c)(1)(ii).

B. Subpart 15.4, Contract Pricing, is revised to incorporate the revised threshold for obtaining certified cost or pricing data at FAR 15.403–4(a)(1). The example provided of a price adjustment is also revised to reflect the increased threshold. A new paragraph (a)(3) is added to allow a contractor with a prime contract entered into before July 1, 2018, to request that the contracting officer modify the contract without requiring consideration to reflect a \$2 million threshold for obtaining certified cost or pricing data on subcontracts entered on and after July 1, 2018, by replacing the following clauses, as applicable. The prescriptions at FAR 15.408 will instruct the contracting officer to:

- Replace FAR clause 52.215–12, Subcontractor Certified Cost or Pricing Data, with its Alternate I.
- Replace FAR clause 52.215–13, Subcontractor Certified Cost or Pricing

Data—Modifications, with its Alternate I.

C. Subpart 30.2, CAS Program Requirements, is revised to reflect the new \$2 million threshold for inserting the FAR clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts. The threshold for Cost Accounting Standards (CAS) applicability is required by 41 U.S.C. 1502(b)(1)(B) to be the same as the threshold at FAR 15.403-4(a)(1). Thus, changes are made to adjust the thresholds. Conforming changes are also made to the thresholds in FAR provision at 52.230-1, Cost Accounting Standards Notices and Certification; and the clauses at 52.230-2, Cost Accounting Standards; 52.230-3, Disclosure and Consistency of Cost Accounting Practices; 52.230-4, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns; and 52.230-5, Cost Accounting Standards—Educational Institution.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

The proposed changes are not applicable to contracts at or below the simplified acquisition threshold or to contracts for the acquisition of commercial items.

IV. Expected Cost Savings

DoD, GSA, and NASA have performed a regulatory cost analysis on this rule. The following is a summary of the estimated public and Government cost savings. This rule will impact large and small businesses which currently compete on solicitations issued using FAR part 15 negotiation procedures and are valued between \$750,000 and \$2 million as these firms will no longer be required to submit certified cost or pricing data between those amounts. In addition, because of the comparable increase in the cost accounting standards threshold, fewer contractors will be required to comply with FAR clauses that implement the cost accounting standards. The following is a summary of the estimated cost savings to the public calculated in perpetuity in 2016 dollars at a 7 percent discount rate:

Present Value Cost Savings	– \$588,988,385
Annualized Cost Savings	– \$ 41,229,187
Annualized Value Cost Savings as of 2016 if Year 1 is 2020	– \$ 31,453,549

The following is a summary of the estimated cost savings to the Government calculated in perpetuity in 2016 dollars at a 7 percent discount rate:

Present Value Cost Savings	– \$90,669,628
Annualized Cost Savings	– \$6,346,874
Annualized Value Cost Savings as of 2016 if Year 1 is 2020	– \$4,841,999

The Councils welcome comments on both the methodology and the analysis during the public comment period on this rule. To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at www.regulations.gov, search for “FAR Case 2018-005,” click “Open Docket,” and view “Supporting Documents.”

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select 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. This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This proposed rule is expected to be an E.O. 13771 deregulatory action. Information on the estimated cost savings of this rule are discussed in the “Expected Cost Savings” section of this preamble.

VII. Regulatory Flexibility Act

The changes in this rule are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and it is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to increase the threshold for requiring certified cost or pricing data from \$750,000 to \$2 million.

The objective is to implement section 811 of the National Defense Authorization Act for Fiscal Year 2018 which amends 10 U.S.C.

2306a and 41 U.S.C. 3502 to increase the threshold for requesting certified cost or pricing data from \$750,000 to \$2 million.

This rule will impact small entities who compete on solicitations issued using FAR part 15, Contracting by Negotiation, valued between \$750,000 and \$2 million. It also impacts subcontracts and contract modifications, including those contracts awarded under sealed bidding procedures, valued between \$750,000 and \$2 million. Offerors and contractors under the revised threshold will no longer be required to submit “certified cost or pricing data” and will now submit “data other than certified cost or pricing data,” which takes less time to prepare.

In order to calculate the savings due to the increased threshold, the same FY 2016 Federal Procurement Data System (FPDS) data was utilized that was used to calculate information collection burdens associated with submission of certified cost or pricing data and of data other than certified cost or pricing data under the Office of Management and Budget (OMB) Control Number 9000-0013, which was cleared in January 2018. For contracts and orders awarded using FAR part 15 that were valued between \$750,000 and \$2 million, reflecting the actions impacted by the increase in the threshold, there were 2,697 contract awards/orders issued, 636 modifications to contracts or orders, an estimated 1,288 subcontracts awarded, and 592 subcontract modifications. Of these responses, 3,364 were from small entities. Of the 1,871 small entities that were awarded contract or issued orders, 1,501 were unique small entities (about 1.25 contracts/orders per small entity). We estimate a comparable ratio of actions to entities in the other categories. This ratio is less than the overall ratio of actions to entities because this is just a small slice of the total range covered by the information collection clearance. The cost accounting standards do not apply to small entities, therefore that threshold change only affects other than small entities.

The proposed rule does not include additional reporting or record keeping requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no available alternatives to the proposed rule to accomplish the desired objective of the statute. However, the impact on small entities will be beneficial, as it will relieve them of the requirement to provide certified cost or pricing data when the acquisition is less than \$2 million. Instead, they may submit data other than certified cost or pricing data which is estimated to save 40 hours of labor effort and related cost savings for each submission not requiring certification.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–005), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply. However, DoD, GSA, and NASA believe the changes proposed by this rule will result in a reduction to the paperwork burden approved under the following two OMB Control Numbers: 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, and 9000–0129, Cost Accounting Standards Administration.

OMB Control Number 9000–0013

OMB Control Number 9000–0013 covers the paperwork burden for submitting cost or pricing data and certified cost or pricing data. With this proposed rule, the public reporting burden for this collection is expected to decrease from 9,759,813 hours to 9,160,160 as fewer contractors will be required to submit certified cost or pricing data.

Based on this proposed rule, the revised annual reporting burden has been estimated as follows:

FAR Clause 52.214–28:

Respondents 2

Total annual responses 2

Response burden hours 320

FAR Clause 52.215–12:

Respondents 2,544

Total annual responses 2,544

Response burden hours 407,040

FAR Clause 52.215–13:

Respondents 700

Total annual responses 700

Response burden hours 112,000

FAR Clause 52.215–20:

Respondents 25,853

Total annual responses 117,225

Response burden hours 6,259,120

FAR Clause 52.215–21:

Respondents 8,440

Total annual responses 27,623

Response burden hours 2,381,680

As part of this proposed rulemaking, the FAR Council is soliciting comments from the public in order to:

(1) Evaluate whether the proposed revisions to this collection of information are necessary for the proper performance of the functions of the FAR Council, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FAR Council's estimate of the burden of the

revised 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 collection techniques.

Organizations and individuals desiring to submit comments on the information collection requirements associated with this rulemaking should submit comments not later than December 2, 2019 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB). The copy to GSA can be submitted by either 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, 2nd Floor, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

Instructions: All items submitted must cite Information Collection 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data. 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).

OMB Control Number 9000–0129

OMB Control Number 9000–0129 requires contractors performing CAS-covered contracts to submit notifications and descriptions of certain cost accounting practice changes, including revisions to their Disclosure Statements, if applicable. With this proposed rule, the public reporting burden for this collection is expected to decrease from 474,075 to 314,475 hours as fewer contracts will be over the threshold for CAS applicability, which is the same as the threshold for obtaining certified cost or pricing data.

A request for public comment on a revision and extension of OMB Control Number 9000–0129 was published on August 2, 2019.

List of Subjects in 48 CFR Parts 14, 15, 30, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 14, 15, 30, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 14, 15, 30, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 14—SEALED BIDDING

■ 2. Amend section 14.201–7 by revising paragraph (c)(1) to read as follows:

14.201–7 Contract clauses.

* * * * *

(c)(1) When contracting by sealed bidding, the contracting officer shall—

(i) Insert the clause at 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at 15.403–4(a)(1); or

(ii) Upon request of a contractor in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration to replace clause 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, with its Alternate I.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 3. Amend section 15.403–4 by—

■ a. Revising the third sentence of paragraph (a)(1) introductory text;

■ b. Revising the second sentence of paragraph (a)(1)(iii) introductory text; and

■ c. Adding paragraph (a)(3).

The revised and added text reads as follows:

15.403–4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(a)(1) * * * The threshold for obtaining certified cost or pricing data is \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for

prime contracts awarded on or after July 1, 2018.

* * * * *

(iii) * * * Price adjustment amounts must consider both increases and decreases (e.g., a \$500,000 modification resulting from a reduction of \$1,500,000 and an increase of \$1,000,000 is a \$2,500,000 pricing adjustment exceeding the \$2,000,000 threshold).

* * *

* * * * *

(3) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract, without requiring consideration, to reflect a \$2 million threshold for obtaining certified cost or pricing data on subcontracts entered on and after July 1, 2018. See 15.408.

■ 4. Amend section 15.408 by revising paragraphs (d) and (e) to read as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

(d) *Subcontractor Certified Cost or Pricing Data.* The contracting officer shall—

(1) Insert the clause at 52.215–12, Subcontractor Certified Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included; or

(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration, to replace clause 52.215–12, Subcontractor Certified Cost or Pricing Data, with its Alternate I.

(e) *Subcontractor Certified Cost or Pricing Data—Modifications.* The contracting officer shall—

(1) Insert the clause at 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included; or

(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration, to replace clause 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications, with its Alternate I.

* * * * *

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION
30.201–4 [Amended]

■ 5. Amend section 30.201–4 by removing from paragraph (b)(1) “\$750,000” and adding “\$2 million” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.214–28 by—
■ a. Removing from the clause prescription reference “14.201–7(c)” and adding “14.201–7(c)(1)(i)” in its place;
■ b. Adding the Alternate I to the basic clause.

The revised text reads as follows:

52.214–28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Alternate I (DATE). As prescribed in 14.201–7(c)(1)(ii), substitute the following paragraph (b) in place of paragraph (b) of the basic clause:

(b) Unless an exception under FAR 15.403–1(b) applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), as part of the subcontractor’s proposal in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed \$750,000; or

(2) Before awarding any subcontract expected to exceed \$2 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed \$2 million.

■ 7. Amend section 52.215–12 by—
■ a. Removing from the clause prescription reference “15.408(d)” and adding “15.408(d)(1)” in its place;
■ b. Revising the clause date;
■ c. Removing from the clause “15.403–4” and replacing it with “15.403–4(a)(1)”, twice; and
■ d. Adding the Alternate I to the basic clause.

The revised text reads as follows:

52.215–12 Subcontractor Certified Cost or Pricing Data.

* * * * *

Subcontractor Certified Cost or Pricing Data (Date)

* * * * *

Alternate I (Date). As prescribed in 15.408(d)(2), substitute the following paragraph (a) in place of paragraph (a) of the basic clause:

(a) Unless an exception under FAR 15.403–1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed \$750,000; or

(2) Before awarding any subcontract expected to exceed \$2 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed \$2 million.

■ 8. Amend section 52.215–13 by—
■ a. Removing from the clause prescription reference “15.408(e)” and adding “15.408(e)(1)” in its place;
■ b. Revising the clause date;
■ c. Removing from the clause “15.403–4” and replacing it with “15.403–4(a)(1)”, four times; and
■ d. Adding the Alternate I to the basic clause.

The revised text reads as follows:

52.215–13 Subcontractor Certified Cost or Pricing Data—Modifications.

* * * * *

Subcontractor Certified Cost or Pricing Data—Modifications (Date)

* * * * *

Alternate I (DATE). As prescribed in 15.408(e)(2), substitute the following paragraphs (a), (b), and (d) for paragraphs (a), (b), and (d) of the basic clause:

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4(a)(1); and
(2) Be limited to such modifications.

(b) Unless an exception under FAR 15.403–1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed \$750,000; or

(2) Before modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed \$2 million.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$2 million.

- 9. Amend section 52.230-1 by—
- a. Removing from the provision prescription reference “30.201-3” and the word “provisions”, adding “30.201-3(a)” and “provision” in its place respectively;
- b. Revising the date of the provision; and
- c. Removing from paragraph (a) “\$750,000” and adding “\$2 million” in its place.

The revision reads as follows:

52.230-1 Cost Accounting Standards Notices and Certification.

* * * * *

Cost Accounting Standards Notices and Certification (DATE)

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- 10. Amend section 52.230-2 by—
- a. Removing from the clause prescription reference “30.201-4(a)” and adding “30.201-4(a)(1)” in its place;
- b. Revising the date of the clause; and
- c. Removing from paragraph (d) “\$750,000” and adding “\$2 million” in its place.

The revision reads as follows:

52.230-2 Cost Accounting Standards.

* * * * *

Cost Accounting Standards (DATE)

* * * * *

- 11. Amend section 52.230-3 by revising the date of the clause, and removing from paragraph (d)(2) “\$750,000” and adding “\$2 million” in its place.

The revision reads as follows:

52.230-3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

Disclosure and Consistency of Cost Accounting Practices (DATE)

* * * * *

- 12. Amend section 52.230-4 by—
- a. Removing from the clause prescription reference “30.201-4(c)” and adding “30.201-4(c)(1)” in its place;
- b. Revising the date of the clause; and
- c. Removing from paragraph (d)(2) “\$750,000” and adding “\$2 million” in its place.

The revision reads as follows:

52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

* * * * *

Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns (DATE)

* * * * *

- 13. Amend section 52.230-5 by—
- a. Removing from the clause prescription reference “30.201-4(e)” and adding “30.201-4(e)(1)” in its place;
- b. Revising the date of the clause; and
- c. Removing from paragraph (d)(2) “\$750,000” and adding “\$2 million” in its place.

The revision reads as follows:

52.230-5 Cost Accounting Standards—Educational Institution.

* * * * *

Cost Accounting Standards—Educational Institution (DATE)

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[FR Doc. 2019-20797 Filed 10-1-19; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA-2019-0068]

RIN 2126-AC28

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to amend its Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook. The Out-of-Service Criteria provide enforcement personnel nationwide, including FMCSA’s State partners, with uniform enforcement tolerances for roadside inspections. Currently, the regulations reference the April 1, 2018, edition of the handbook. Through this document, FMCSA proposes to incorporate by reference the April 1, 2019, edition.

DATES: Comments on this document must be received on or before November 1, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-

2019-0068 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:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, 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, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 by telephone at (202) 366-9209 or by email at michael.huntley@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking (NPRM) is organized as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
 - D. Advance Notice of Proposed Rulemaking Not Required
- II. Executive Summary
- III. Legal Basis for the Rulemaking
- IV. Background
- V. Discussion of Proposed Rulemaking
- VI. International Impacts
- VII. Section-by-Section Analysis
- VIII. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
 - B. E.O. 13771 Reducing Regulation and Controlling Costs
 - C. Regulatory Flexibility Act (Small Entities)
 - D. Assistance for Small Entities
 - E. Unfunded Mandates Reform Act of 1995
 - F. Paperwork Reduction Act
 - G. E.O. 13132 (Federalism)
 - H. E.O. 12988 (Civil Justice Reform)
 - I. E.O. 13045 (Protection of Children)
 - J. E.O. 12630 (Taking of Private Property)
 - K. Privacy
 - L. E.O. 12372 (Intergovernmental Review)

M. E.O. 13211 (Energy Supply, Distribution, or Use)
 N. E.O. 13175 (Indian Tribal Governments)
 O. National Technology Transfer and Advancement Act (Technical Standards)
 P. Environment (National Environmental Policy Act)

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–2019–0068), 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–2019–0068, 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 that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Any comments FMCSA receives which are 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–2019–0068, 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.dot.gov/privacy.

D. Advance Notice of Proposed Rulemaking Not Required

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) if a proposed rule is likely to lead to the promulgation of a major rule, unless the Agency either develops the proposed rule through a negotiated rulemaking process or finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest. To be a major rule, a rule must result in or be likely to result in: (1) “an annual effect on the economy of \$100,000,000 or more;” (2) “a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic

regions;” or (3) “significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 U.S.C. 804(2). This proposed rule does not meet the criteria of a major rule because it simply incorporates by reference updates to the 2018 CVSA handbook edition made on April 1, 2019, which, as described below, are largely editorial and provide clarity and guidance to inspectors and motor carriers transporting transuranics. Therefore, this proposed rule is not likely to lead to the promulgation of a major rule and does not require an ANPRM.

II. Executive Summary

This rulemaking proposes to update an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b). The provision at § 385.4(b) currently references the April 1, 2018, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” The Out-of-Service Criteria, while not regulations, provide enforcement personnel nationwide, including FMCSA’s State partners, with uniform enforcement tolerances for roadside inspections. In this rulemaking, FMCSA proposes to incorporate by reference the April 1, 2019 edition of the handbook.

Thirteen (13) updates distinguish the April 1, 2019, handbook edition from the 2018 edition. The incorporation by reference of the 2019 edition does not impose new regulatory requirements.

III. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated

regulations to address the congressional mandate on hazardous materials. Those regulations on hazardous materials are the underlying provisions to which the material incorporated by reference discussed in this NPRM is applicable.

IV. Background

In 1986, the U.S. Department of Energy (DOE) and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” As of January 1, 2005, all vehicles and carriers transporting highway route controlled quantities of radioactive material are regulated by the U.S. Department of Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the U.S. All highway route controlled quantities of radioactive material shipments entering the U.S. must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the U.S.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b)(1) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection

Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.”

According to 2012–2017 data from FMCSA’s Motor Carrier Management Information System (MCMIS), approximately 3.5 million Level I—Level VI roadside inspections were performed annually. Nearly 97 percent of these were Level I,¹ Level II,² and Level III³ inspections. During the same period, an average of 842 Level VI inspections were performed annually, comprising only 0.024 percent of all roadside inspections. On average, out-of-service violations were cited in only 10 Level VI inspections annually (1.19 percent), whereas on average, out-of-service violations were cited in 269,024 Level I inspections (25.3 percent), 266,122 Level II inspections (22.2 percent), and 66,489 Level III inspections (6.2 percent) annually. Based on these statistics, CMVs transporting transuranics and highway route controlled quantities of radioactive materials are clearly among the best maintained and safest CMVs on the highways today, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

V. Discussion of Proposed Rulemaking

Section 385.4(b)(1), as amended on July 8, 2019, references the April 1, 2018, edition of the CVSA handbook. This rule proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2018, edition date with a reference to the new edition date of April 1, 2019.

The changes made in the 2019 edition of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules. Amending § 385.4(b), ensures that the publication is available for interested parties to view at the FMCSA’s Washington, DC office and that the publication may be purchased

¹ Level I is a 37-step inspection procedure that involves examination of the motor carrier’s and driver’s credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

² Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

³ Level III is a driver-only inspection that includes examination of the driver’s credentials and documents.

from the CVSA’s website address, mail address, and phone.

April 1, 2019, Changes

The 2019 edition identifies (1) driver-related violations of the FMCSRs that are so severe as to warrant placing the CMV driver out of service, (2) vehicle equipment-related violations of the FMCSRs that are so severe as to warrant placing the CMV out of service, and (3) unsafe conditions in the transportation of hazardous materials. The purpose of the publication is to provide inspection criteria for Federal and State motor carrier safety enforcement personnel to promote uniform and consistent inspection procedures of CMVs operated in commerce.

Thirteen changes to the 2019 edition of the CVSA handbook distinguish it from the April 1, 2018 edition. The first change amended Part I, Item 4(a) to clarify that a driver operating a CMV without complying with the requirements indicated on a Skill Performance Evaluation (SPE) Certificate shall be declared out of service. Currently, the Out-of-Service Criteria state that a driver will be placed out of service for “No skill performance evaluation in possession, when required.” The CVSA Driver-Traffic Enforcement Committee agreed that operating a CMV without complying with the requirements indicated on the SPE (*e.g.*, the driver possesses an SPE requiring a prosthetic limb, but is not using the prosthetic limb while driving) is as serious as not having the SPE in possession when required. Part I, Item 4(a) was amended to read “No skill performance evaluation in possession, when required, or when operating a commercial motor vehicle without complying with the requirements indicated on the skill performance evaluation.” This clarification is not expected to have any effect on the number of out-of-service violations cited during Level VI inspections.

The second change amended the Out-of-Service Criteria Part II Policy Statement to address a discrepancy between language in CVSA Operational Policy 5 and the Out-of-Service Criteria Part II Policy Statement regarding removing or replacing a CVSA decal. Operational Policy 5 states that any expired CVSA decal shall be removed before a new CVSA decal is affixed. However, prior to the amendment, the Policy Statement in Part II of the Out-of-Service Criteria stated that “a current CVSA decal shall be affixed and no other CVSA decals shall be visible.” As such, the language in the Out-of-Service Criteria allowed an existing decal to be covered up rather than removed, while

the language in the Operation Policy does not. CVSA noted that covering up expired decals is problematic because colors can show on the corners and new decals layered on the vehicle can be easily removed. It was determined that removing old decals first is most appropriate, and the Policy Statement in Part II of the Out-of-Service Criteria was amended to reflect the same guidance that is in Operational Policy 5. This amendment will not have any effect on the number of out-of-service violations cited during Level VI inspections.

The third change amended Part II, Item 1(g)(2) to clarify that a vehicle should be placed out of service if any rotor (disc) has a crack in length of more than 75 percent of the friction surface and passes completely through a structural support connecting the rotor friction surfaces. The CVSA Vehicle Committee received information from a Society of Engineers workgroup indicating that a collapse of the rotor is imminent if there is a crack through the vents, and the vehicle should be placed out of service. Part II, Item 1(g)(2) was amended to clarify that a vehicle should be placed out of service if any rotor (disc) has “a crack in length of more than 75 percent of the friction surface and passes completely through the rotor to the center vent from either side, or completely through a solid rotor, or completely through a structural support connecting the rotor friction surfaces.” A picture was added to clearly outline the condition of the rotor. FMCSA records indicate that no out-of-service violations have been issued regarding brake drums and rotors (discs) as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The fourth change amended the Cargo Securement section of the Out-of-Service Criteria (Part II, Item 2) to add headings to subparagraphs (a)–(f), consistent with the other sections of the Out-of-Service Criteria. The new headings are intended to help with the uniformity of content, as well as to make it easier to distinguish between the different sections of the Out-of-Service Criteria. This amendment is editorial in nature and will not have any effect on the number of out-of-service

violations cited during Level VI inspections.

The fifth change amended the Out-of-Service Criteria Tiedown Defect Table by adding language to address a new type of tiedown used in cargo securement applications. Doleco USA has developed a new cargo and equipment securement tiedown assembly comprised of synthetic chain links of Ultra High Molecular Weight Poly Ethylene (UHMWPE) Dyneema® webbing with specialized hooks and binders. The high-performance webbing is as strong as steel chain link but weighs up to 85 percent less. Due to the unique nature of its synthetic links, the manufacturer also provides product specific hooks/fittings for securing the tiedown ends and a specialized load tensioner for tightening. CVSA developed an Inspection Bulletin outlining the characteristics and use of the Doleco USA textile link system. The Out-of-Service Criteria Tiedown Defect Table was amended, consistent with the information provided in the CVSA Inspection Bulletin, to ensure that an inspector can adequately determine if the tiedown is defective once it is in use. Because of the sensitive nature of the cargo being transported, motor carriers transporting transuranics and highway route controlled quantities of radioactive materials are especially diligent regarding use of tiedowns that do not have any defects, as evidenced by the lack of any out-of-service violations cited for defective tiedowns during inspections conducted between 2012–2017. As such, this amendment is not expected to have any effect on the number of out-of-service violations cited during Level VI inspections.

The sixth change amended Part II, Item 4(b)(3) to clarify that any broken bearing strap on a universal joint of a driveline/driveshaft would constitute the same imminent hazard as a missing, broken, or loose retainer bolt, and a vehicle with this condition should be placed out of service. Part II, Item 4(b)(3) was amended to read “Any missing, broken or loose universal joint bearing cap bolt, bearing strap or retainer bolt,” and a descriptive label was added to the current picture of a universal joint in the Out-of-Service Criteria to help identify and clarify a bearing strap. FMCSA records indicate that no out-of-service violations have been issued regarding universal joints as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at

all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The seventh change amended Part II of the Out-of-Service Criteria to add a new section regarding temporary driver seats. The CVSA Vehicle Committee approved the addition of a new out of service condition for vehicles using any temporary seating for the driver, as opposed to a permanent seat that is secured to the vehicle in a workmanlike manner. Temporary seating includes, but is not limited to, a milk crate, lawn chair, patio chair, folding chair, plastic step-stool, or a cooler. The Out-of-Service Criteria were amended to include a new item, Part II, Item 4. DRIVER'S SEAT, a. Temporary Seating, to read “Any vehicle that has temporary seating for the driver.”⁴ A note was also added to this section to provide the list of things that may constitute temporary seating. As noted above, CMVs transporting transuranics and highway route controlled quantities of radioactive materials are among the best maintained and safest CMVs on the highways today, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported. FMCSA believes that it is highly unlikely that the CMVs transporting these sensitive commodities will be equipped with temporary seating for the driver, and as such, the Agency does not expect the addition of this item to the Out-of-Service Criteria to affect the number of out-of-service violations cited during Level VI inspections.

The eighth change amended the Exhaust Systems section of the Out-of-Service Criteria (Part II, Item 5) to add headings to subparagraphs (a)–(d), consistent with the other sections of the Out-of-Service Criteria. The new headings are intended to help with the uniformity of content, as well as to make it easier to distinguish between the different sections of the Out-of-Service Criteria. This amendment is editorial in nature and will not have any effect on the number of out-of-service violations cited during Level VI inspections.

The ninth change amended Part II, Item 6 to include subsection (5) in the note that was already contained in the Out-of-Service Criteria. The CVSA Passenger Carrier Committee, in consultation with manufacturers,

⁴ This addition results in the renumbering of all the Critical Vehicle Inspection Items in the Out-of-Service Criteria from Driveline/Driveshaft forward.

determined that subsection (5) should not pertain to buses having monocoque-style frames. The note to Part II, Item 6 was amended to read “Items (1) and (2) apply to all buses, including those having unitized (monocoque) construction. Items (3), (4) and (5) apply only to buses having a body-on-chassis design, such as most school buses.” As this change applies only to buses, it will not have any effect on the number of out-of-service violations cited during Level VI inspections, which are applicable to carriers transporting transuranics and highway route controlled quantities of radioactive materials.

The tenth change amended Part II, Item 9 to add language to address non-manufactured holes in the drag link of the steering system. Following a recommendation from industry partners, the CVSA Vehicle Committee determined that when a drag link is sufficiently worn to cause a non-manufactured hole, the link could buckle and lead to the loss of steering control. Based on the above, if a vehicle is found to have a non-manufactured hole in a drag link, the vehicle should be placed out of service, and the Out-of-Service Criteria were amended to add a new subparagraph (3) to Part II, Item 9(h) to read “When a drag link is so worn to cause a non-manufactured hole.” FMCSA records indicate that no out-of-service violations have been issued regarding steering systems as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The eleventh change amended the title of Part II, Item 15, applicable to buses, motorcoaches, passenger vans, or other passenger-carrying vehicles, to clarify that the seating requirements in subparagraph (c) of that item apply to temporary and aisle seats only. As this change applies only to passenger-carrying vehicles, it will not have any effect on the number of out-of-service violations cited during Level VI inspections, which are applicable to carriers transporting transuranics and highway route controlled quantities of radioactive materials.

The twelfth change amended Part III, Items (1)–(10) to make the formatting of this section consistent with the

remainder of the Out-of-Service Criteria, and to remove redundant language related to hazardous and dangerous materials inspection standards. This amendment is editorial in nature and will not have any effect on the number of out-of-service violations cited during Level VI inspections.

The thirteenth change amended the North American Standard Out-of-Service Criteria and Level VI Inspection Procedures to add a note to Item 30, Trupact II Package Tiedown Assemblies. The CVSA Level VI Inspection Program Committee added a note to address empty packages that may be transported with loaded packages during a Level VI inspection, noting that an empty package (TRUPACT II/HALFPACT) shall be subject to the same tiedown requirements as those applicable to a loaded package when transported and inspected during a Level VI inspection. FMCSA records indicate that no out-of-service violations have been issued regarding securement of packages as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that packages are properly secured at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions, and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

VI. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

The CVSA is an organization representing Federal, State and Provincial motor carrier safety enforcement agencies in the United States, Canada and Mexico. The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections conducted in all three countries.

VII. Section-by-Section Analysis

Section 385.4 Matter Incorporated by Reference

Section 385.4(b), as amended on July 8, 2019, references the April 1, 2018, edition of the CVSA handbook. This proposed rule would replace the reference to the April 1, 2018, edition

date with a reference to the new edition date of April 1, 2019.

VIII. 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 has determined that this action is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). The Office of Management and Budget (OMB) did not, therefore, review this document.

FMCSA also determined that the proposed rule does not warrant formal analysis of costs and benefits under DOT Policies and Procedures for Rulemaking [DOT Order 2100.6 dated December 20, 2018, section 11(e)(1)]. The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2018, edition to the April 1, 2019, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” FMCSA reviewed its MCMIS data on roadside inspections performed from 2012 to 2017 and determined that the handbook updates would not have any effect on the number of out-of-service violations cited during Level VI inspections. Therefore, the impact of a final rule would be de minimis.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs,” does not apply to this action because it is not a significant regulatory action, as defined in section 3(f) of E.O. 12866.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), Public Law 96–354, 94 Stat. 864 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), 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 In compliance with the RFA, FMCSA evaluated the effects of the proposed rule on small entities. The proposed rule incorporates by reference updates to the 2018 CVSA handbook edition made on April 1, 2019, which, as described above, are largely editorial and provide clarity and guidance to inspectors and motor carriers transporting transuranics. DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. None of the updates from the 2018 edition imposes new requirements or makes substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to “prepare and make available an initial regulatory flexibility analysis” that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule is largely editorial and provides guidance to inspectors and motor carriers transporting transuranics in interstate commerce. Accordingly, I hereby certify that if promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities. FMCSA invites comments from anyone who believes there will be a significant impact on small entities from this action.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult the FMCSA point of contact, Michael Huntley, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

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. 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 to \$100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any one year. This proposed rule will not result in such an expenditure.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this proposed rule.

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 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 analyzed this proposed rule and determined that it does not have implications for federalism.

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 to include an evaluation of their environmental health and safety effects on children, if the agency has reason to believe that the rule may disproportionately affect 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 pose an environmental or safety risk that could affect children disproportionately.

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.

K. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (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. This proposed rule does not require the collection of personally identifiable information or affect the privacy of individuals.

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 proposed rule.

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.

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

⁵ 5 U.S.C. 601.

management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. FMCSA does not intend to adopt its own technical standard, thus there is no need to submit a separate statement to OMB on this matter. The standard being incorporated in this proposed rule is discussed in detail in sections V, Discussion of Proposed Rulemaking, and VII, Section by Section Analysis, and is reasonably available at FMCSA and through the CVSA website.

P. Environment (National Environmental Policy Act)

FMCSA analyzed this rule consistent with the National Environmental Policy Act of 1969 (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)(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The content in this proposed rule is covered by this CE, there are no extraordinary circumstances present, and the proposed action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *Regulations.gov* website listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113 13901–13905, 13908, 31135, 31136, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; Sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; Sec. 350 of Pub. L. 107–87, 115 Stat. 833, 864; and 49 CFR 1.87.

■ 2. Revise § 385.4(b)(1) to read as follows:

§ 385.4 Matter incorporated by reference.

* * * * *

(b) * * *

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection

Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,” April 1, 2019, incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87 on:

Dated: September 19, 2019.

Raymond P. Martinez,
Administrator.

[FR Doc. 2019–20905 Filed 10–1–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190925–0045]

RIN 0648–B184

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendments 50A–F

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendments 50A, 50B, 50C, 50D, 50E, and 50F to the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council)(Amendments 50A–F). This proposed rule would delegate authority to Louisiana, Mississippi, Alabama, Florida, and Texas (Gulf states), to establish specific management measures for the harvest of red snapper in Federal waters in the Gulf of Mexico (Gulf) by the private angling component of the recreational sector. The purposes of this proposed rule and Amendments 50A–F are to increase fishing opportunities and economic benefits by allowing each Gulf state to establish specific management measures for the recreational harvest of red snapper in Federal waters by private anglers landing in that state.

DATES: Written comments must be received on or before November 1, 2019.

ADDRESSES: You may submit comments on this proposed rule identified by

“NOAA–NMFS–2017–0122” by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0122, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Lauren Waters, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, or to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendments 50A–F may be obtained from the website: <https://www.fisheries.noaa.gov/action/amendment-50a-f-state-management-program-recreational-red-snapper>. Amendments 50A–F includes an environmental impact statement, fishery impact statement, regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT:

Lauren Waters, NMFS Southeast Regional Office, telephone: 727–824–5305; email: lauren.waters@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes red snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The red snapper stock annual catch limit (ACL) is divided into commercial (51 percent) and recreational (49 percent) sector allocations. In 2015, though Amendment 40 to the FMP, the recreational sector was separated into a private angling component and a Federal charter vessel and headboat (for-hire) component until 2022 (80 FR 22422, April 22, 2015). Within the recreational sector, the recreational ACL

is allocated 57.7 percent to the private angling component and 42.3 percent to the for-hire component. Recreational harvest of red snapper in Gulf Federal waters is managed through a two-fish bag limit, a 16-inch (40.6 cm), total length (TL), minimum size limit, and fishing seasons for each component that begin on June 1 and close when the annual catch target (ACT) of the respective recreational component is projected to be reached. However, for the 2018 and 2019 fishing years, NMFS issued exempted fishing permits to each of the five Gulf states to allow each state to set the fishing season for private anglers landing in that state. The fishing season for the for-hire component continues to be set by NMFS. The Gulf red snapper stock is not undergoing overfishing, and is not overfished but continues to be managed under a rebuilding plan that ends in 2032.

From 1996 through 2014, the recreational fishing season for red snapper in Gulf Federal waters became progressively shorter, and increased catch rates and inconsistent (longer) Gulf state water recreational fishing seasons contributed to recreational harvest overages. Recreational fishermen throughout the Gulf have requested more flexibility from the Council and NMFS in recreational red snapper management to provide greater socio-economic benefits to their local areas.

In 2017, the Council began developing Amendments 50A–50F to establish state management programs for the harvest of red snapper in the Gulf by the recreational sector. State management refers to allowing a state to set some regulations applicable to anglers landing red snapper in that state (*e.g.*, recreational bag limits and season length), or in some circumstances applicable to anglers fishing for red snapper in Federal waters off that state (*e.g.*, closed areas). Amendment 50A includes actions affecting all Gulf states and the overall Federal management of recreational red snapper, regardless of whether all Gulf states participate in a state management program. Amendments 50B–F are individual amendments for each Gulf state (Louisiana, Mississippi, Alabama, Florida, and Texas, respectively) and contain the Council's selection of preferred alternatives for each individual state management plan.

Management measures under a state's management program would have to achieve the same conservation goals as the current Federal management measures (*e.g.*, constrain harvest to the state's allocated portion of the recreational ACL). Although under state

management for measures controlling certain harvest activities, red snapper would remain a federally managed species. The Council's Scientific and Statistical Committee would continue to recommend the acceptable biological catch for red snapper, while the Council would determine the total recreational sector, component, and state ACLs.

Management Measures Contained in This Proposed Rule

This proposed rule would delegate authority to each of the Gulf states to establish specific management measures applicable to private anglers in Gulf Federal waters who are landing red snapper in that state. This rule would also allow Texas, Alabama, and Florida to request that NMFS close areas of Federal waters to the harvest and possession of red snapper by private anglers, consistent with the analysis provided in Amendment 50A.

Recreational Components Included in State Management Programs

Currently, the Council and NMFS establish all management measures for both the Federal private angling and for-hire components in Gulf Federal waters. This proposed rule would delegate to each state the authority to establish specific management measures applicable to the private angling component only. The Council and NMFS would continue to specify all management measures applicable to the Federal for-hire component. The provision ending sector separation after the 2022 fishing year would be removed, and separate ACLs would continue to be set for each recreational component indefinitely.

NMFS notes that while Amendments 50A–F and this proposed rule apply to the recreational red snapper private angling component, a vessel with only state-issued for-hire permits, that fishes under a state's private angling component ACL, may not fish in Federal waters.

Delegation

Currently, each Gulf state decides when to open and close their respective state waters to fishing for reef fish. These state water recreational reef fish seasons may not be consistent with the fishing seasons in Federal waters. In state waters, the states establish other management measures, such as recreational bag limits and size limits, while the Council has the responsibility for reef fish management measures applicable in Federal waters. This proposed rule would delegate some management authority to a Gulf state to regulate recreational harvest of red

snapper in Federal waters by private anglers landing in that state. Each state would be required to establish the private angling season structure for harvest of its assigned portion of the ACL, monitor landings, and prohibit further landings of red snapper when the state-specific component ACL is reached or projected to be reached. Each state would also be required to specify a bag limit and a minimum size limit within the range of 14 to 18 inches (35.6 cm to 45.7 cm), TL. In combination, these measures must be expected to maintain harvest levels within the state's ACL. A state could also establish a maximum size limit.

Unless an area of Federal waters is closed to the harvest and possession of red snapper, NMFS expects that enforcement would primarily be conducted in state waters and dockside. However, under the delegation, private anglers would be required to comply with the fishing license or permit requirements of the state in which they intend to land the fish and may possess red snapper in Federal waters only if in compliance with that state's season, bag limit, and minimum size limit.

If NMFS determines that a state's red snapper private angling-component regulations are inconsistent with the FMP and the state fails to correct the inconsistency after notice and an opportunity to do so, or a state does not specify the required management measures, then NMFS would suspend that state's delegation and publish a notice in the **Federal Register** stating that the default management measures for the red snapper private angling component apply in Federal waters off that state. The default management measures are the current season (June 1 until the projected closure date), bag limit (2 fish per person per day), and minimum size limit (16 inches (40.6 cm), TL). The areas of Federal waters off Florida and off Texas are currently defined in 50 CFR 622.2. This proposed rule would add definitions of "off Alabama," "off Mississippi," and "off Louisiana," so that each Gulf state would have a defined Federal water boundary off that state.

Allocation

Currently, the red snapper private angling component ACL is managed as a single unit for all of the Gulf states. This proposed rule would apportion the private angling component ACL to each state. The allocation would be based on the allocations requested by each state in its EFP application, which totaled 96.22 percent of the overall component ACL. The remaining 3.78 percent would be apportioned between Florida and

Alabama, proportionally, based on their EFP allocation request. Therefore, this proposed rule would establish the apportionment of the private angling ACL to each Gulf state as follows:

Alabama 26.298 percent (1,122,662 lb (509,231 kg)), round weight, Florida 44.822 percent (1,913,451 lb (867,927 kg)), round weight, Louisiana 19.120 percent (816,233 lb (370,237 kg)), round weight, Mississippi 3.550 percent (151,550 lb (68,742 kg)), round weight, and Texas 6.210 percent (265,105 lb (120,250 kg)), round weight.

If NMFS suspends one or more state's delegation, NMFS would project the private angling season in Federal waters off the applicable states based on the remaining aggregate portion of the ACL reduced by the established 20 percent buffer that is used to determine the Federal annual catch target. Anglers who fish in Federal waters off a state without an active delegation of authority would fish under the default Federal regulations (season, size limit, and bag limit) as described previously.

Post-Season ACL Adjustments

The proposed rule would establish post-season accountability measures (AM). An overage adjustment, or payback provision, is an AM that reduces the following year's ACL by some specified amount, usually the amount the ACL was exceeded. The current recreational red snapper post-season AM applies when the stock is classified as overfished and an overage of the total recreational sector's ACL occurs. This AM requires NMFS to reduce the recreational sector ACL and ACT, and applicable component ACL and ACT, in the year following an overage of the total recreational ACL by the full amount of the overage, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. This proposed rule would establish post-season ACL overage adjustments for states with an active delegation, regardless of stock status. If the landings of a state exceed that state's ACL, then in the following fishing year that state's ACL would be reduced by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. The total recreational ACL and the total private angling component ACL would also be reduced.

In Amendments 50B–F, the Council expressed its intent to allow for carryover of a state's unused portion of its ACL to the following fishing year if permitted under a separate amendment to the FMP that the Council was

developing to add a carryover provision to the Acceptable Biological Catch Control Rule. In June 2019, the Council postponed work on that amendment. Therefore, NMFS is not proposing to implement this provision at this time.

Area Closures

This proposed rule would allow a Gulf state, consistent with the terms of an active delegation, to request that NMFS close all, or an area of, Federal waters to the harvest and possession of red snapper by private anglers. The state would request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS would publish a notice in the **Federal Register** implementing the closure in Federal waters off that state for the fishing year.

Based on the analysis in Amendment 50A, Texas would be able to request a closure of all Federal waters off the state to allow a year-round fishing season in state waters and a limited season in Federal waters. Florida would be able to request a closure of Federal waters off the state seaward of the 20-fathom (36.6-m) depth contour, or seaward of the 35-fathom (64.0-m) depth contour, for the duration of Florida's open private angling component season. Alabama would be able to request a closure of Federal waters off their state seaward of the 20-fathom (36.6-m) depth contour, or seaward of the 35-fathom (64.0-m) depth contour, for the duration of Alabama's open private angling component season. Florida and Alabama want the ability to close deeper waters to potentially extend their seasons by decreasing the average size of fish landed. These areas were chosen because an approximation for the 20-fathom depth contour is currently defined in 50 CFR 622.34(d) for the seasonal shallow-water grouper closure, and an approximation of the 35-fathom depth contour is partially defined in 50 CFR 622.35(b) for the seasonal eastern Gulf longline closure. The coordinates for any closure off Texas, Florida, or Alabama are provided in Appendix H of Amendment 50A and would be included in the **Federal Register** notice implementing the closure. Neither Louisiana nor Mississippi provided any potential closures to analyze in Amendment 50A and these states would not be able to request Federal waters closures through this process without further action by the Council.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS

Assistant Administrator has determined that this proposed rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

The rule concerns state management of recreational fishing for red snapper from private/leased vessels in the Gulf exclusive economic zone (EEZ). The only entities that would be directly affected by the rule are the Gulf states: Alabama, Florida, Louisiana, Mississippi, and Texas. States are not small entities. Anglers (recreational fishers) who fish for red snapper in the Gulf EEZ would be indirectly affected; however, anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6) and the RFA does not consider indirect impacts. For-hire fishing businesses with vessels that are permitted to take anglers into the Gulf EEZ to fish for red snapper would not be affected. Hence, this rule would not have a significant economic impact on a substantial number of small entities and an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Recreational, Red snapper.

Dated: September 25, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*
 ■ 2. In § 622.1, paragraph (d), Table 1, add footnote 9 to the entry for “FMP for

the Reef Fish Resources of the Gulf of Mexico”, to read as follows:

§ 622.1 Purpose and scope.
 * * * * *
 (d) * * *

TABLE 1—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf. ^{1 3 4 7 9}

⁹ Certain provisions for the management of the private angling component of recreational red snapper in the Gulf EEZ have been delegated to the Gulf states, as specified in § 622.23.

■ 3. In § 622.2, remove the combined definition of “Off Louisiana, Mississippi, and Alabama” and in alphabetical order, add specific definitions for “Off Alabama”, “Off Louisiana” and “Off Mississippi” and to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Off Alabama means the waters in the Gulf west of a rhumb line at 87°31.1’ W long., which is a line directly south from the Alabama/Florida boundary, to a rhumb line at 88°23.1’ W long., which is a line directly south from the Mississippi/Alabama boundary.

* * * * *

Off Louisiana means the waters in the Gulf west of a rhumb line at 89°10.0’ W long., which is a line extending directly south from South Pass Light, to a rhumb line beginning at 29°32.1’ N lat., 93°47.7’ W long. and extending to 26°11.4’ N lat., 92°53.0’ W long., which line is an extension of the boundary between Louisiana and Texas.

Off Mississippi means the waters in the Gulf west of a rhumb line at 88°23.1’ W long., which is a line directly south from the Mississippi/Alabama boundary, to a rhumb line at 89°10.0’ W long., which is a line extending directly south from South Pass Light.

* * * * *

■ 4. In § 622.3, add paragraph (f) to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(f) *State management of the Gulf red snapper recreational sector private angling component.* Alabama, Florida, Louisiana, Mississippi, and Texas are delegated the authority to specify certain management measures related to the harvest and possession of red snapper by the private angling component in the Gulf EEZ. See

§ 622.23 for the Gulf recreational red snapper management measures that have been delegated.

■ 5. Section 622.23 is added to read as follows:

§ 622.23 State management of the red snapper recreational sector private angling component in the Gulf EEZ.

(a) *Delegation.* Alabama, Florida, Louisiana, Mississippi, and Texas (Gulf states) are delegated the authority to manage certain aspects of recreational red snapper harvest by the private angling component in the Gulf EEZ (*i.e.*, delegation). All other management measures for recreational red snapper in the Gulf EEZ not specified in this section continue to apply during state management.

(1) *Delegation of authority.* As described in the FMP for the Reef Fish Resources of the Gulf of Mexico, each Gulf state must specify the red snapper private angling component fishing season start and end dates to maintain harvest levels within the state’s ACL, as stated in paragraph (a)(1)(ii) of this section. Each state must also specify a recreational bag limit and a minimum size limit within the range of 14 to 18 inches (35.6 cm to 45.7 cm), total length. Each state may specify a maximum size limit. If NMFS determines that a state’s red snapper private angling component regulations are inconsistent with the FMP and the state fails to correct the inconsistency after notice and an opportunity to do so, or a state does not specify the required management measures set forth above, *i.e.*, fishing season start and end dates, a recreational bag limit, and a minimum size limit, then NMFS will publish a notice in the **Federal Register** stating that the default management measures for the red snapper private angling component, as described in paragraph (a)(2) of this section, apply in the EEZ off that state.

(i) *State management areas.* For purposes of the delegation of the authority to establish certain management measures for the red snapper private angling component, five areas in the Gulf EEZ have been established; one off each of the five Gulf states: Alabama, Florida, Louisiana, Mississippi, and Texas. The boundaries off each state are described in § 622.2.

(ii) *State private angling component ACLs.* All ACLs specified below are in round weight.

(A) *Alabama regional management area*—1,122,662 lb (509,231 kg).

(B) *Florida regional management area*—1,913,451 lb (867,927 kg).

(C) *Louisiana regional management area*—816,233 lb (370,237 kg).

(D) *Mississippi regional management area*—151,550 lb (68,742 kg).

(E) *Texas regional management area*—265,105 lb (120,250 kg).

(2) *Default management measures.* If a state’s delegation is suspended, the Federal management measures for the private angling season, recreational bag limit, and minimum size limit as described in §§ 622.34(b)(seasonal closure), 622.37(a)(1)(size limit), 622.38(b)(3)(bag limit), and 622.41(q)(2)(i)(season length) apply in the EEZ off that state. All other management measures not specified in this section remain in effect.

(b) *Post-season ACL adjustments for states with an active delegation.* If a state’s red snapper private angling component landings exceed the applicable state’s component ACL specified in paragraph (a)(1)(ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, reducing that state’s private angling ACL by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(c) *Area closures.* As described in the FMP, for the red snapper private angling component, a state with an active delegation may request that NMFS establish an area closure in the EEZ off that state that prohibits the private angling component from harvesting or possessing red snapper. If NMFS determines that the request is within the scope of the analysis in the FMP, NMFS will publish a notice in the **Federal Register** to implement the requested closure for the fishing year.

■ 6. In § 622.34, revise paragraph (b) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(b) *Seasonal closure of the recreational sector for red snapper.* The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero. See § 622.23(a)(1) regarding the fishing season for states with an active delegation of state management of the red snapper private angling component. A person subject to the private angling component bag limit under an active delegation of state management must be in compliance with the fishing license (permit) requirements of the state in which they intend to land the fish and may not possess red snapper in the Gulf EEZ when that state season is closed.

* * * * *

■ 7. In § 622.37, revise paragraph (a)(1) to read as follows:

§ 622.37 Size limits.

* * * * *

(a) * * *

(1) *Red snapper*—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.38 (b)(3) and 13 inches (33.0 cm), TL, for a fish taken by a person not subject to the bag limit. See § 622.23(a)(1) regarding the minimum size limit for states with an active delegation of state management of the red snapper private angling component. A person subject to the private angling component bag limit under an active delegation of state management must be in compliance with the fishing license (permit) requirements of the state in which they intend to land the fish and may not possess red snapper in the Gulf EEZ that are smaller than may be possessed in that state. Additionally, fish taken by persons subject to the private angling component bag limit under state

management may not be less than 14 inches (35.6 cm), TL, in the Gulf EEZ.

* * * * *

■ 8. In § 622.38, revise paragraph (b)(3) to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(3) *Red snapper*—2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. See § 622.23(a)(1) regarding the bag limit applicability for states with an active delegation of state management of the red snapper private angling component. A person subject to the private angling component bag limit under an active delegation of state management must be in compliance with the fishing license (permit) requirements of the state in which they intend to land the fish and may not possess more red snapper in the Gulf EEZ than may be possessed in that state.

* * * * *

■ 9. In § 622.39, revise paragraphs (a)(2)(i)(B) and (C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed. The Federal charter vessel/headboat component quota is 3.130 million lb (1.420 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. The private angling component quota is 4.269 million lb (1.936 million kg), round weight.

* * * * *

■ 10. In § 622.41, add a sentence to the end of paragraph (q)(2)(i) and revise paragraph (q)(2)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(i) * * * See § 622.23(a)(1) regarding the fishing season for the private angling component for states with an active delegation.

* * * * *

(iii) * * *

(A) [Reserved]

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed. For the 2019 fishing year, the component ACT is 2.848 million lb (1.292 million kg), round weight. For the 2020 and subsequent fishing years, the component ACT is 2.504 million lb (1.136 million kg), round weight.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. The component ACT is 3.415 million lb (1.549 million kg), round weight.

* * * * *

[FR Doc. 2019-21259 Filed 10-1-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 190925-0043]

RIN 0648-BJ03

Fisheries of the Exclusive Economic Zone Off Alaska; Rockfish Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 119 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 107 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). This proposed rule would require that the operator of a federally permitted catcher vessel using hook-and-line, pot, or jig gear in the Bering Sea and Aleutian Islands and Gulf of Alaska retain and land all rockfish (*Sebastes* and *Sebastolobus* species) caught while fishing for groundfish or Pacific halibut. This action is necessary to improve identification of rockfish species catch by vessels using electronic monitoring, provide more precise estimates of rockfish catch, reduce waste and incentives to discard rockfish, reduce overall enforcement burden, and promote more consistent management between State and Federal fisheries. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the BSAI FMP, the GOA FMP, and other applicable laws.

DATES: Submit comments on or before November 1, 2019.

ADDRESSES: Submit your comments, identified by FDMS Docket Number NOAA-NMFS-2019-0068, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov/
#!/docketDetail;D=NOAA-NMFS-2019-0068, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 119 to the BSAI FMP, Amendment 107 to

the GOA FMP (collectively Amendments 119/107), the Regulatory Impact Review (RIR; referred to as the Analysis), and the National Environmental Policy Act Categorical Exclusion evaluation document prepared for this action may be obtained from www.regulations.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and by email to OIRA_Submission@omb.eop.gov or by fax to (202)-395-5806.

FOR FURTHER INFORMATION CONTACT: Josh Keaton (907) 586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) under the BSAI FMP and GOA FMP. The North Pacific Fishery Management Council (Council) prepared the BSAI FMP and GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP and GOA FMP appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendments 119/107. The Council submitted Amendments 119/107 for review by the Secretary of Commerce (Secretary), and a Notice of Availability (NOA) of Amendments 119/107 was published in the **Federal Register** on August 22, 2019 (84 FR 43783), with comments invited through October 21, 2019. Comments submitted on this proposed rule by the end of the comment period (see **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may address Amendments 119/107 or this proposed rule. However, all comments addressing Amendments 119/107 must be received by October 21, 2019, to be considered in the approval/disapproval decision on Amendments 119/107. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by October 21, 2019, whether specifically directed to the FMP amendments, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendments 119/107 and addressed in

the response to comments in the final rule.

Background

In April 2019, the Council adopted Amendments 119/107. If approved by the Secretary, Amendments 119/107 would require that catcher vessels (CVs) using hook-and-line, pot, or jig gear in groundfish and halibut fisheries of the Federal exclusive economic zone (EEZ) retain and land all rockfish. This proposed rule would also establish a means to limit the amount of rockfish that can enter commerce through barter, sale, or trade through the implementation of a maximum commerce allowance. Additionally, this proposed rule would require full retention of rockfish by CVs using hook-and-line, pot, or jig gear even if the rockfish species is prohibited for directed fishing or on prohibited species status (as defined in § 679.20(d)(2)). When on prohibited species status, these retained rockfish would be prohibited from entering commerce, except as fish meal.

In this proposed rule “rockfish” is defined as any species of the genera *Sebastes* or *Sebastolobus* except *Sebastes ciliates* (dark rockfish) in the BSAI and GOA and *Sebastes melanops* (black rockfish) and *Sebastes mystinus* (blue rockfish) in the GOA (see § 679.2). This preamble also uses the term “prohibited species status” to mean status conferred by a NMFS management action issued under § 679.20(d)(2) that prohibits retention of a species.

The following sections of this preamble provide a brief description of (1) rockfish management for CVs using hook-and-line, pot, or jig gear; (2) the need for the action; (3) the elements of this proposed rule; and (4) the regulatory changes made by this proposed rule.

Description of Rockfish Management and Fisheries for CVs Using Hook-and-Line, Pot, or Jig Gear

Rockfish Management

Rockfish are commercially important groundfish comprising 29 commonly caught species. Most of these species inhabit rocky areas in shallow to moderately deep waters that overlap with groundfish and halibut fisheries. Many rockfish species are sought for their commercial value. Except for thornyhead rockfish (*Sebastolobus* spp.), rockfish have a closed swim bladder, which regulates buoyancy. Quick changes in pressure that occur when rockfish are caught and brought to the surface damage internal organs,

therefore rockfish are susceptible to high mortality when brought to the surface from depth. Virtually no rockfish survive once caught without using special handling procedures to return the rockfish to depth as soon as possible.

Many rockfish species are commonly caught as incidental catch by vessels directed fishing for other species using hook-and-line, pot, or jig gear. NMFS prohibits directed fishing for most rockfish species at the beginning of the year because the amount of the total allowable catch (TAC) for rockfish species or species groups do not support directed fishing. If a TAC is reached, NMFS prohibits retention of the species.

Since directed fishing by CVs using hook-and-line, pot, or jig gear is already prohibited for nearly all species of rockfish, NMFS limits retention as the primary tool to regulate rockfish catch. These retention limits are referred to as the maximum retainable amount (MRA). The MRA is the proportion or percentage of retained catch of a species prohibited for directed fishing (incidental catch species) to the retained catch of a species open for directed fishing (basis species). When NMFS prohibits directed fishing for a groundfish species, retention of the catch of that species is allowed up to an MRA based on percentages set forth in Table 10 and Table 11 to 50 CFR part 679. Section 679.20(d)(iii)(B) requires vessel operators to discard at sea any rockfish that exceeds the MRA. For the individual fishing quota (IFQ) halibut and IFQ sablefish fisheries, when IFQ halibut or IFQ sablefish is on board, discarding rockfish is prohibited unless rockfish are required to be discarded (§ 679.7(f)(8)). Rockfish must be discarded for two reasons: (1) When rockfish catch is in excess of an MRA; and (2) when a rockfish species is prohibited from being retained (in a prohibited species status) because the TAC for that species has been reached.

The MRA percentages were established to discourage vessel operators from targeting rockfish and other species while fishing for halibut or groundfish species open to directed fishing. However, in some fishing areas the natural incidental catch rate of rockfish may be much higher than the specified MRA, forcing vessel operators to discard rockfish that they cannot avoid catching. MRA calculations can be challenging for a vessel operator to compute correctly, since rates for different rockfish species vary depending on the target fishery and the management area in which a vessel is fishing. The inconsistency of MRA regulations between Federal and State of

Alaska (State) fisheries, between different rockfish species, and different management areas makes it difficult for a vessel operator to ensure their compliance with retention and discard requirements.

Since almost no rockfish survive being caught and brought to the surface, for CVs using hook-and-line, pot, or jig gear, at-sea discards are estimated and then deducted from that species TAC. Because some species are infrequently caught, accurate estimation of catch for those species is difficult. This results in high variance in the estimates of at-sea discards on smaller CVs. High variance most commonly occurs on smaller CVs that deploy hook-and-line, pot, or jig gear. This high variance can result in less accurate estimates of total catch of rockfish species, and can result in more restrictive management measures.

Overall, this action would not affect the status of a rockfish stock in the BSAI or GOA. The acceptable biological catch and TAC for rockfish species would continue to be established through the annual harvest specifications process. The processes by which NMFS manages the catch of a rockfish species to stay within its TAC would not change under the alternatives considered for this action.

Fisheries for CVs Using Hook-and-Line, Pot, or Jig Gear

Hook-and-line gear, pot gear, and jig gear are commonly used in groundfish fisheries in the BSAI and GOA. Hook-and-line gear is a stationary, buoyed, and anchored line with hooks attached. Pot gear is a portable structure designed to capture and retain fish alive in the water. Jig gear is a single, non-buoyed, non-anchored line with hooks attached. CVs that operate in the BSAI and GOA use hook-and-line, pot, and jig gear to prosecute primarily Pacific cod, Pacific halibut, and sablefish. There is also some directed fishing for rockfish using hook-and-line and jig gear. Many other species are caught with hook-and-line, pot, or jig gear; however, most of these species are incidental to the four main target species.

CVs using hook-and-line, pot, or jig gear fish throughout the year. As discussed in Section 2.7.1.1 of the Analysis, approximately 200 CVs use hook-and-line, pot, or jig gear in the BSAI, and approximately 950 CVs use hook-and-line, pot, or jig gear in the GOA. Some CVs participate in all three main target fisheries, and some operate in both the BSAI and GOA.

Pacific cod fisheries using hook-and-line, pot, or jig gear mostly occur in January through March and September through December. Rockfish incidental

catch in these fisheries is generally low, at less than one percent of total groundfish catch, in the BSAI, and approximately one percent of total groundfish catch in the GOA (see Section 2.7.1.3 of the Analysis).

IFQ Pacific halibut and sablefish fisheries occur from March through November. Rockfish incidental catch in the Pacific halibut fishery in the BSAI is approximately three percent of the total groundfish and halibut catch. Rockfish incidental catch in the Pacific halibut fishery of the GOA is approximately five percent of total groundfish and halibut catch. The IFQ sablefish fishery in the BSAI and GOA has a rockfish incidental catch rate of approximately 10 percent. These are average rates across the entire fleet and a broad geographic area. Depending on where a vessel operator is fishing, the rate can be higher or lower.

Need for This Action

The Council recommended, and NMFS proposes, requiring full retention of all rockfish caught by CVs using hook-and-line, pot, or jig gear targeting groundfish and halibut in the GOA and BSAI for a number of reasons. These reasons include (1) improving the identification of rockfish species catch by vessels using electronic monitoring (EM); (2) providing more precise estimates of rockfish catch; (3) reducing waste and incentives to discard rockfish; (4) reducing overall enforcement burden; and (5) promoting more consistent management between State and Federal fisheries.

Improve Identification of Rockfish Species Catch by Vessels Using EM

In 2018, NMFS developed regulations to allow small fixed gear CVs in partial observer coverage to opt into EM coverage for the calendar year rather than carrying an observer. The data collected from EM systems deployed on CVs is used to obtain catch and discard information from these CVs. NMFS approved 168 CVs for EM coverage for 2019.

EM studies focused on the accuracy of species identification have shown that in most cases it is possible to identify fish to the species or species group required for management. However, some rockfish species are difficult to identify and continue to be challenging for EM to identify. These rockfish species include shortraker rockfish (*Sebastes borealis*), rougheye rockfish (*Sebastes aleutianus*), blackspotted rockfish (*Sebastes melanostictus*), and various other rockfish species that are less commonly caught. This proposed rule could improve the identification of

rockfish species by requiring all catch to be retained and landed where it could be verified, thereby reducing potential errors in catch composition.

Provide More Precise Estimates of Rockfish Catch

Under § 679.5(e), all groundfish and halibut that is landed (*i.e.*, caught, retained and delivered) in the EEZ must be sorted, weighed, and reported through the Interagency Electronic Reporting System (eLandings) or other NMFS approved software. Information about the at-sea discard of rockfish are collected through the North Pacific Observer Program. Estimates of rockfish discarded at-sea are recorded by fisheries observers or EM and used to calculate the at-sea discard rate. NMFS applies these rates to the catch made by vessels fishing in groundfish and halibut fisheries in the same reporting area, target fishery, and time period.

Most rockfish species have specialized habitat needs, which means they are more sparsely distributed than most other groundfish species. As a result, at-sea discard rates can be variable, which results in less precise estimates of total rockfish removals (see Section 2.7.1.3 of the Analysis).

Requiring the complete retention of all rockfish caught by CVs using hook-and-line, pot, or jig gear would allow the total catch of rockfish to be sorted, weighed, and reported via eLandings instead of extrapolated from at-sea discard rates. Therefore, this proposed rule would likely result in much better information on the incidental catch of rockfish by CVs using hook-and-line, pot, or jig gear.

Reduce Waste and Incentives To Discard Rockfish

As discussed in Section 2.7.1.4 of the Analysis, more rockfish catch is retained than discarded. Since the majority of rockfish do not survive being caught, discards of rockfish increases waste. Many factors affect why a vessel operator discards rockfish. The most common reason for discards, inferred by available data, is regulatory discard. These discards occur when an MRA is exceeded during a fishing trip or if a rockfish species is on prohibited species status. Some vessel operators have expressed dissatisfaction with the current regulations requiring them to discard dead fish that could otherwise be used for human consumption. These concerns were consistently mentioned during public comment during the development of this proposed action.

The existing MRA regulations may result in vessel operators discarding rockfish to avoid enforcement actions

resulting from MRA overages. Removing the MRA regulations associated with rockfish caught by CVs using hook-and-line, pot, or jig gear and requiring full retention could reduce waste.

Reduce Overall Enforcement Burden

This proposed rule would no longer require CVs using hook-and-line, pot, or jig gear to comply with MRA regulations for rockfish. This would likely reduce the number of enforcement cases associated with rockfish MRA violations, and therefore, allow the NMFS Office of Law Enforcement (NMFS OLE) to pursue other priorities. Overall, this proposed rule simplifies current regulations and promotes more consistency in the regulations. This alone is likely to increase compliance and reduce enforcement burden (see Section 2.7.2.11 of the Analysis).

Federal fisheries in the BSAI and GOA have many regulations that require vessel operators to retain certain species. Due to the broad geographic area in which fisheries occur in the BSAI and GOA, monitoring vessels while they are actively fishing presents logistical challenges. However, the use of at-sea observers, EM, vessel boarding, and monitoring of offloads can assist in monitoring compliance of full retention requirements.

Promote More Consistent Management Between State and Federal Fisheries

Rockfish retention requirements for CVs using hook-and-line, pot, or jig gear differ between fisheries in Federal waters and State waters. Vessel operators that fish in both Federal waters and State waters are subject to two different sets of regulations concerning management of rockfish incidental catch. Sections 2.6.4 and 2.7.2.5 of the Analysis illustrates the complexity of rockfish retention requirements. A vessel operator may fish in multiple areas and have differing retention requirements in a single trip. This creates confusion that may result in unintentional non-compliance or unnecessary rockfish discards.

The State already has full retention requirements for all rockfish in some areas, which include parts of the Eastern GOA, Prince William Sound, and Cook Inlet. This proposed rule would establish Federal regulations that are very similar, although not identical, to existing State regulations on management of rockfish incidental catch in these management areas. Federal and State management inconsistencies may be eliminated, if the State mirrors Federal full retention requirements in all areas.

Elements of This Proposed Rule

The Analysis for this proposed rule is based on the most recent and best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act, recognizing that some information (such as operational costs) are unavailable (see Section 3.1 of the Analysis).

This proposed rule has two main provisions. The first provision would require the operator of a CV required to have a federal fishery permit using hook-and-line, pot, or jig gear to retain and land all rockfish that are caught while fishing for groundfish or halibut in the EEZ of the BSAI and GOA, even if a species of rockfish is on prohibited species status.

The second provision addresses the disposition of retained amounts of rockfish. There is a need to establish a limit or allowance on the sale of rockfish caught as incidental catch that both provides an incentive for vessel operators to retain all rockfish and avoids elevated rates of rockfish incidental catch because rockfish MRAs would not apply under the proposed full retention requirement. This proposed rule would implement a limit called the maximum commerce allowance (MCA). The MCA would be calculated at each rockfish landing, and would limit the amount of rockfish allowed to enter commerce. The MCA for rockfish would be calculated as a percentage of the total retained groundfish and halibut landed during each delivery. Section 2.7.2.4 of the Analysis discusses establishing an MCA in detail.

The selection of the appropriate MCA percentage has some trade-offs. Low MCA percentages prioritize the avoidance of rockfish while fishing, but increases the number of trips that may have retained rockfish that cannot be sold. This could affect a vessel operator's compliance with full rockfish retention. Higher MCA percentages could result in more retention compliance. However, higher MCA percentages could also result in increased rockfish catch as vessel operators could seek areas with higher rockfish incidental catch, or change fishing behavior to engage in top-off fishing. "Top-off fishing" occurs when a vessel operator deliberately targets a valuable species that is closed to directed fishing in an attempt to reach the full MRA of that species.

The Council and NMFS considered a range of MCA percentages, and this rule proposes an MCA of 15 percent. This percentage balances the concern that an MCA that is too restrictive could

increase effects on vessels and processors and create incentives to discard rockfish, with the concern that a less restrictive MCA could incentivize vessel operators to engage in top-off fishing of rockfish species and increase rockfish catch. Section 2.7.2.4 of the Analysis identified that a 15-percent MCA would allow vessel operators, for 84 to 89 percent of the trips that were analyzed, to sell all rockfish caught. The 15-percent MCA could limit financial incentives for vessel operators to catch more rockfish (Section 2.7.2.4 of the Analysis). For the remaining 11 to 16 percent of the trips that were analyzed, vessel operators would be able to sell most rockfish that were caught. Amounts in excess of the MCA would not be allowed to enter commerce, with the exception of fish meal.

Fish meal is considered a processed fish product that enters commerce. The Council recommended allowing rockfish in excess of the selected MCA to be processed into meal to address concerns raised by processors in communities such as Kodiak, Alaska. Vessel operators delivering fish to Kodiak and similar Alaska communities have limited options for discarding fish delivered to a processor that is unable to process retained rockfish or other species for human consumption. Allowing rockfish in excess of the MCA to be processed into meal is unlikely to provide any financial incentives to target rockfish, due to the low value of fish meal. Section 2.7.2.2 of the Analysis discusses fish meal and the impacts of full retention on processors in more detail.

This proposed rule would require full retention of rockfish even if NMFS prohibits retention of a rockfish species. When NMFS prohibits retention of a rockfish species, the MCA for that rockfish species would be zero percent. This is discussed in detail in Section 2.7.2.6 of the Analysis. The NMFS OLE expressed concern that there could be compliance issues if the Council did not recommend full retention when a rockfish species is on prohibited species status. The lack of a full retention requirement when a rockfish species is on prohibited species status could increase non-compliance of the retention limits by creating confusion and potential loopholes that would affect the ability to enforce the limits established under this proposed action. The primary goal of an action to prohibit retention is to remove financial incentives for vessel operators to continue to harvest a species. To remove some of the financial incentives that may result in top-off fishing when a rockfish species is placed on prohibited

species status, the MCA for that species would be set to zero. This would remove financial incentives to harvest more rockfish than the true incidental catch and could result in CVs using hook-and-line, pot, or jig gear avoiding areas that have high incidental catch rates of those species.

Amounts of rockfish that are retained, but in excess of the MCA, could not be sold. However, this surplus rockfish could be used by vessel crew, donated, processed into fish meal, or discarded by processing plant personnel. The Council anticipates that most rockfish landed are likely to be processed; however, the decision to purchase, process, or discard rockfish is at the discretion of each individual processor. The Council also anticipates that most rockfish caught in excess of the MCA will be used in some way through personal use or charitable donations, thereby reducing waste and increasing the use of incidentally caught rockfish. Providing options such as retaining rockfish for personal use or donating it to charitable organizations would give vessel operators who dislike discarding dead fish an incentive for complying with the regulations associated with full retention of rockfish.

During the February 2019 Council meeting, public comments identified a concern about the potential for increased retention of yelloweye rockfish (*S. ruberrimus*) due to its relatively high value compared to other rockfish species. Yelloweye rockfish has a value that is two to three times more than other rockfish species. Potentially, vessel operators could change their fishing behavior to target yelloweye rockfish up to the 15-percent MCA. Section 2.7.2.4.1 of the Analysis provides additional detail on yelloweye rockfish value and retention rates. Based on these concerns, this proposed rule would establish a separate limit for yelloweye rockfish of 5 percent MCA in all areas, except the Southeast Outside District of the GOA (SEO) defined in Figure 3 of part 679. This limit would be established within the 15-percent overall MCA for all rockfish species. This more restrictive MCA for yelloweye rockfish, within the overall 15-percent MCA for all other rockfish, is intended to limit the incentive for vessel operators to target yelloweye rockfish. To aid the reader in understanding this provision, we provide the following example of how an MCA would be calculated and applied:

A vessel operator retains all rockfish during an IFQ halibut trip and delivers 1,000 pounds of halibut and 200 pounds of various rockfish species, of which 50 pounds is yelloweye rockfish. The MCA

for rockfish is 150 pounds ($1,000 * 0.15$). The MCA for yelloweye rockfish is 50 pounds ($1,000 * 0.05$). The vessel operator could sell all yelloweye rockfish and 100 pounds of other rockfish species. Fifty pounds of rockfish could not enter commerce but could be donated or used by vessel crew.

To assist in resolving inconsistencies in management between State and Federal fisheries in the SEO, the Council recommended that current full retention requirements for demersal shelf rockfish (DSR) in the SEO remain unchanged. In the SEO (one of seven areas in the GOA), vessel operators would be required to retain all rockfish, however the MCA would be different in the SEO from other areas of the GOA. The MCA for DSR species in the SEO would be limited to 10 percent of the aggregate round weight of retained IFQ halibut and groundfish, excluding sablefish, and one percent of the aggregate round weight of retained sablefish. This is necessary to avoid inconsistency in management between Federal and State fisheries as discussed in Sections 2.6.5 and 2.6.6 of the Analysis.

Regulatory Changes Made by the Proposed Rule

The following provides a brief summary of the regulatory changes that would be made by this proposed rule. This proposed rule would—

- Revise § 679.5(c)(3)(iv)(A)(3) to clarify that CVs using hook-and-line, pot, or jig gear are not required to record MRAs for rockfish since MRAs do not apply in full retention requirements.
- Add § 679.7(a)(5) to prohibit discard of rockfish from CVs using hook-and-line, pot, or jig gear.
- Revise § 679.7(f)(8) to clarify that rockfish are not required to be discarded.
- Revise § 679.20(d)(1)(iii)(B) to clarify that rockfish are not required to be discarded when rockfish are closed to directed fishing.
- Revise § 679.20(d)(2) to clarify that rockfish are still required to be retained by CVs using hook-and-line, pot, or jig gear, even if a species is on prohibited species status.
- Revise § 679.20(j) to include the full retention requirement, description of the MCA, and requirements for disposal of rockfish in excess of the MCA.
- Revise Table 10 and Table 11 to 50 CFR part 679 by adding a footnote to the rockfish column referencing § 679.20(j).

Classification

Pursuant to Sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the

NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendments 119/107, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendments 119/107 and the regulatory revisions in this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the Regulatory Flexibility Act (RFA) to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess

of \$11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Directly Regulated by the Proposed Action

NMFS estimates that the entities directly regulated by this proposed rule are CVs using hook-and-line, pot, or jig gear in the BSAI and GOA. The thresholds applied to determine if an entity or group of entities are “small” under the RFA depend on the industry classification for the entity or entities. Based on the 2016 fishing season, 169 CVs were active using hook-and-line, pot, or jig gear in the BSAI, and 949 CVs were active using hook-and-line, pot, or jig gear in the GOA. Of these CVs, 136 in the BSAI and 932 in the GOA are considered small entities.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. Small entities would be required to comply with the requirements to retain rockfish. A full retention requirement for CVs using hook-and-line, pot, or jig gear could have operational implications for vessel operators. Since a CV using hook-and-line, pot, or jig gear would be required to retain all incidental catch of rockfish, this could reduce the CV’s hold space, thereby displacing more valuable target species. Because this action would allow most of a CV’s rockfish catch to enter commerce, the cost of requiring retention is estimated to be largely offset by the value of the rockfish. Therefore, the costs are expected to be minimal.

Section 2.7.2 of the Analysis describes the proposed requirements for requiring rockfish retention. The Council and NMFS determined that the benefits of the proposed revised regulations outweigh the costs of these additional requirements on the existing fleet. This proposed rule would meet the objectives of the action while minimizing adverse impacts on fishery participants.

This proposed rule would require full retention of all rockfish species by CVs using hook-and-line, pot, or jig gear in the BSAI and GOA. The management measures include full retention of rockfish even if the species is on prohibited species status, but these retained rockfish would be prohibited from entering commerce (*i.e.*, being sold). Most of the expected effects sections in the Analysis focus on hook-and-line gear due to the amount of rockfish incidental catch encountered by hook-and-line gear compared to pot and jig gears. Section 2.7.2.1 of the Analysis indicates that the impact of

requiring CVs using pot or jig gear to retain and land all rockfish catch would likely be minimal in relation to CVs using hook-and-line gear.

There are no significant alternatives to this proposed rule that would accomplish the objectives of requiring full retention of all rockfish species by CVs using hook-and-line, pot, or jig gear in the BSAI and GOA.

Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule contains no new recordkeeping or recording requirements. As explained in the “Provide More Precise Estimates of Rockfish Catch” section of this proposed rule, landed fish must be reported under existing Federal and State regulations. A more detailed explanation of current recordkeeping and reporting requirements for CVs using hook-and-line, pot, or jig gear can be found at § 679.5. Therefore, this proposed rule would meet the objectives of the action while minimizing the reporting burden for fishery participants.

Federal Rules That May Duplicate, Overlapping, or Conflict With the Proposed Action

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

This proposed rule references collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0515 (Alaska Interagency Electronic Reporting System (IERS)).

The response time includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to OIRA_Submission@omb.eop.gov, or fax to (202) 395–5806. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: <https://www.reginfo.gov/public/do/PRAMain>.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 25, 2019.

Samuel D. Rauch III,

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

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447; Pub. L. 111-281.

2. In § 679.5, revise paragraph (c)(3)(iv)(A)(3) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

- (c) * * *
(3) * * *
(iv) * * *
(A) * * *

(3) Retain and record discard quantities over the MRA. When a CV is fishing in an IFQ fishery and the fishery for Pacific cod is closed to directed fishing but not in PSC status in that reporting area as described in § 679.20, the operator must retain and record up to and including the maximum retainable amount (MRA) for Pacific cod as defined in Tables 10 or 11 to this part. Quantities over this amount must be discarded and recorded as discard in the logbook.

* * * * *

3. In § 679.7, add paragraph (a)(5), and remove and reserve paragraphs (f)(8)(i)(A) and (f)(8)(ii)(A) to read as follows:

§ 679.7 Prohibitions.

* * * * *

- (a) * * *
(5) Rockfish by catcher vessels using hook-and-line, jig, or pot gear.

(i) For any person, to discard rockfish from a catcher vessel required to have a Federal fisheries permit that is fishing for groundfish or IFQ or CDQ halibut using hook-and-line, jig, or pot gear in the BSAI and GOA until that fish has been landed.

(ii) Exceed the maximum commerce allowance amount established under § 679.20(j).

* * * * *

- (f) * * *
(8) * * *

- (i) * * *
(A) [Reserved]
(ii) * * *
(A) [Reserved]

4. In § 679.20, revise paragraphs (d)(1)(iii)(B), (d)(2), and (j) to read as follows:

§ 679.20 General limitations.

* * * * *

- (d) * * *
(1) * * *
(iii) * * *

(B) Retention of incidental species.

Except as described in § 679.20(e)(3)(iii) and § 679.20(j), if directed fishing for a target species or species group is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

* * * * *

(2) Groundfish as prohibited species closure. When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the Federal Register requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(a), for the remainder of the year, except rockfish species caught by catcher vessels using hook-and-line, pot, or jig gear as described in § 679.20(j)

* * * * *

(j) Full retention of rockfish by catcher vessels using hook-and-line, pot, or jig gear—(1) Retention and landing requirements. The operator of a catcher vessel that is required to have a Federal fisheries permit using hook-and-line, pot, or jig gear, must retain and land all rockfish that is caught while fishing for groundfish or IFQ or CDQ halibut in the BSAI and GOA.

(2) Maximum commerce allowance (MCA) for rockfish in the BSAI and GOA. Except as described in § 679.20(j)(4), when rockfish is closed to directed fishing, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of rockfish retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of

rockfish that is less than or equal to 15 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than rockfish, that are landed during the same fishing trip.

(ii) A person may sell, barter, or trade a round weight equivalent amount of yelloweye rockfish that is less than or equal to 5 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than rockfish, that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(iii) Amounts of rockfish retained by catcher vessels under paragraphs (j)(2)(i) and (ii) of this section that are in excess of the limits specified in paragraphs (j)(2)(i) and (ii) of this section may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade except as fish meal.

(3) MCA of DSR in Southeast Outside District of the GOA (SEO) when closed to directed fishing. When DSR is closed to directed fishing in the SEO, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of DSR retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(ii) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(iii) Amounts of DSR retained by catcher vessels under paragraph (j)(1) of this section that are in excess of the limits specified in paragraphs (j)(3)(i) and (ii) of this section may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade except as fish meal.

(4) *MCA for rockfish when on prohibited species status.* When a rockfish species is placed on prohibited species status under § 679.20(d)(2), the MCA is set to 0 percent and no amount of that rockfish species may enter commerce through sale, barter, or trade except as fish meal. The operator of a

catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), may put rockfish retained and landed in excess of the MCA specified in this paragraph to any use, including

but not limited to personal consumption or donation, but such rockfish must not enter commerce through sale, barter, or trade except as fish meal.

■ 5. Revise Table 10 to part 679 to read as follows:

BILLING CODE 3510-22-P

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j) ⁶)																
Code	Species	Pollock	Pacific cod	DW Flat (2)	Rex sole	Flathead sole	SW Flat (3)	Arrow-tooth	Sablefish	Aggregated rockfish ⁽⁷⁾	SIR/RE ERA (1)	DSR SFO (C/Ts only) (5)	Alka mackerel	Aggregated forage fish ⁽⁶⁾	Skates (10)	Other species (6)	Grenadiers (12)	Squids
110	Pacific cod	20	n/a ⁽⁸⁾	20	20	20	20	35	1	5	(1)	10	20	2	5	20	8	20
121	Arrowtooth	5	5	20	20	20	20	n/a	1	5	0	0	20	2	5	20	8	20
122	Flathead sole	20	20	20	20	n/a	20	35	7	15	7	1	20	2	5	20	8	20
125	Rex sole	20	20	20	n/a	20	20	35	7	15	7	1	20	2	5	20	8	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
152/151	Shorthead/roughye (1)	20	20	20	20	20	20	35	7	15	n/a	1	20	2	5	20	8	20
193	Alka mackerel	20	20	20	20	20	20	35	1	5	(1)	10	n/a	2	5	20	8	20
270	Pollock	n/a	20	20	20	20	20	35	1	5	(1)	10	20	2	5	20	8	20
710	Sablefish	20	20	20	20	20	20	35	n/a	15	7	1	20	2	5	20	8	20
	Flatfish, deep-water ⁽²⁾	20	20	n/a	20	20	20	35	7	15	7	1	20	2	5	20	8	20
	Flatfish, shallow-water ⁽³⁾	20	20	20	20	20	n/a	35	1	5	(1)	10	20	2	5	20	8	20
	Rockfish, other (4)	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
172	Dusky rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
	Rockfish, DSR-SEO (5)	20	20	20	20	20	20	35	7	15	7	n/a	20	2	5	20	8	20
	Skates ⁽¹⁰⁾	20	20	20	20	20	20	35	1	5	(1)	10	20	2	n/a	20	8	20
	Other species (6)	20	20	20	20	20	20	35	1	5	(1)	10	20	2	5	n/a	8	20
	Aggregated amount of non-groundfish species ⁽¹¹⁾	20	20	20	20	20	20	35	1	5	(1)	10	20	2	5	20	8	20

Notes to Table 10 to Part 679		
1	Shorthead/rougheye rockfish	
	SR/RE	
	SR/RE ERA	
Where an MRA is not indicated, use the MRA for SR/RE included under Aggregated Rockfish		
Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).		
2	Deep-water flatfish	
3	Shallow-water flatfish	
4	Other rockfish	
	Other rockfish	
5	Demersal shelf rockfish (DSR)	
	Other species	
	Aggregated rockfish	
	Aggregated rockfish (see § 679.2) means any species of the genera <i>Sebastes</i> or <i>Sebastolobus</i> except <i>Sebastes ciliatus</i> (dark rockfish), <i>Sebastes melanops</i> (black rockfish), and <i>Sebastes mystinus</i> (blue rockfish), except in:	
	Southeast Outside District where DSR is a separate species group for those species marked with an MRA	
	Western Regulatory Area	
	Central Regulatory Area	
	West Yakutat District	
	Southeast Outside District	
	means other rockfish and demersal shelf rockfish	
means other rockfish		
Other rockfish		
<i>S. aurora</i> (aurora) (185)		
<i>S. melanostomus</i> (blackgill)(177)		
<i>S. paucispinis</i> (bocaccio)(137)		
<i>S. goodei</i> (chilipepper)(178)		
<i>S. crameri</i> (darkblotch)(159)		
<i>S. elongatus</i> (greenstriped)(135)		
<i>S. entomelas</i> (widow)(156)		
In the Eastern Regulatory Area only, Other rockfish also includes <i>S. polypsipinis</i> (northern)(136)		
<i>S. variegates</i> (harlequin)(176)		
<i>S. wilsoni</i> (pygmy)(179)		
<i>S. babcocki</i> (redbanded)(153)		
<i>S. proriger</i> (redstripe)(158)		
<i>S. zacentrus</i> (sharpchin)(166)		
<i>S. jordani</i> (shortbelly)(181)		
<i>S. flavidus</i> (yellowtail)(155)		
<i>S. brevispinis</i> (silvergry)(157)		
<i>S. diploproa</i> (splitnose)(182)		
<i>S. saxicola</i> (stripetail)(183)		
<i>S. miniatus</i> (vermillion)(184)		
<i>S. reedi</i> (yellowmouth)(175)		
<i>S. ruberrimus</i> (yelloweye)(145)		
<i>S. helvomiculatus</i> (roscthorn)(150)		
<i>S. caurinus</i> (copper)(138)		
<i>S. nigrocinctus</i> (tiger)(148)		
DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO). Catcher vessels in the SEO have full retention of DSR (see § 679.20(i)).		
Sculpins (160)		
Octopuses (870)		
Sharks (689)		

	Eastern Regulatory Area	where SR/RE is a separate species group for those species marked with an MRA
	Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(i).	
8	n/a	Not applicable
Notes to Table 10 to Part 679		
9	Aggregated forage fish (all species of the following taxa)	<p>Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>) 209</p> <p>Capelin smelt (family <i>Osmeridae</i>) 516</p> <p>Deep-sea smelts (family <i>Bathylagidae</i>) 773</p> <p>Eulachon smelt (family <i>Osmeridae</i>) 511</p> <p>Gunnels (family <i>Pholidae</i>) 207</p> <p>Krill (order <i>Euphausiacea</i>) 800</p> <p>Laternfishes (family <i>Myctophidae</i>) 772</p> <p>Pacific Sand fish (family <i>Trichodontidae</i>) 206</p> <p>Pacific Sand lance (family <i>Ammodytidae</i>) 774</p> <p>Pricklebacks, war-bonnets, cobblenys, cockscombs and shannys (family <i>Stichaeidae</i>) 208</p> <p>Surf smelt (family <i>Osmeridae</i>) 515</p> <p>Alaska (<i>Bathyraja</i>, <i>Parnifera</i>) 703</p> <p>Aleutian (<i>B. aleutica</i>) 704</p> <p>Whiteblotched (<i>Raja binoculata</i>) 705</p> <p>Big Skates (<i>Raja binoculata</i>) 702</p> <p>Longnose Skates (<i>R. rhina</i>) 701</p> <p>Other Skates (<i>Rathyraja</i> and <i>Raja</i> spp.) 700</p>
10	Skates Species and Groups	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.
11	Aggregated non-groundfish	Giant grenadiers (<i>Albatrossia pectoralis</i>) 214
12	Grenadiers	Other grenadiers (all grenadiers that are not Giant grenadiers) 213

■ 6. Revise Table 11 to part 679 to read as follows:

Table 11 to Part 679—BSAI Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES																	
Code	Species	Pollock	Pacific cod	Alaska mackerel	Alaska plaice	Arrowtooth	Kamchaika	Yellow fin sole	Other flatfish ²	Rock sole	Flathead sole	Greenland turbot	Sablefish ¹	Shortraker/rougheye ⁶	Aggregated rockfish ⁵	Squids ⁷	Aggregated forage fish ⁷	Other species ⁴	Grenadiers ⁽⁷⁾
110	Pacific cod	20	na ⁵	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
121	Arrowtooth	20	20	20	20	na	20	20	20	20	20	7	1	2	5	20	2	3	8
117	Kamchaika	20	20	20	20	20	na	20	20	20	20	7	1	2	5	20	2	3	8
122	Flathead sole	20	20	20	35	35	35	35	35	na	na	35	15	7	15	20	2	20	8
123	Rock sole	20	20	20	35	35	35	35	35	na	35	1	1	2	15	20	2	20	8
127	Yellowfin sole	20	20	20	35	35	35	na	35	35	35	1	1	2	5	20	2	20	8
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	35	1	1	2	5	20	2	20	8
134	Greenland turbot	20	20	20	20	35	35	20	20	20	na	na	15	7	15	20	2	20	8
136	Northern Pacific	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
141	Ocean perch	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
132/ 151	Shortraker/Rougheye	20	20	20	20	35	35	20	20	20	20	35	15	na	5	20	2	20	8
193	Alaska mackerel	20	20	na	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
270	Pollock	na	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
710	Sablefish ¹	20	20	20	20	35	35	20	20	20	20	35	na	7	15	20	2	20	8
	Other flatfish ²	20	20	20	35	35	35	35	na	35	35	1	1	2	5	20	2	20	8
	Other rockfish ³	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
	Other species ⁴	20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	na	8
	Aggregated amount non-groundfish species ⁸	20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8

¹ Sablefish: for fixed gear restrictions, see § 679.70(b)(3)(ii) and (f)(11).
² Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, arrowtooth flounder and Kamchaika flounder.
³ Other rockfish includes all "rockfish" as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.
⁴ The Other species includes sculpins, sharks, skates, and octopuses.
⁵ na = not applicable
⁶ Aggregated rockfish includes all "rockfish" as defined at § 679.2, except shortraker and rougheye rockfish. Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(i).
⁷ Forage fish, grenadiers, and squids are all defined at Table 2c to this part.
⁸ All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.
⁹ Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-844]

Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that Banduoo Ltd. (Banduoo), Fujian Rongshu Industry Co., Ltd. (Fujian Rongshu), Rong Shu Industry Corporation (Rong Shu), and Xiamen Yi-He Textile Co., Ltd. (Xiamen Yi-He) made no shipments of subject merchandise during the period of review (POR) of September 1, 2017 through August 31, 2018.

DATES: Applicable October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, 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) 482-3860.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2019, Commerce published the *Preliminary Results*.¹ We invited interested parties to comment on the *Preliminary Results*, but we received no comments. Accordingly, we made no changes to the *Preliminary Results*.

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

¹ See *Narrow Woven Ribbons With Woven Selvedge from Taiwan: Preliminary Determination of No Shipment and Rescission, in Part, of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 34869 (July 19, 2019) (*Preliminary Results*).

Scope of the Order

The scope of this order covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene terephthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the order may:

- Also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an “ornamental trimming;”
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the order include all narrow woven fabrics,

tapes, and labels that fall within this written description of the scope of this antidumping duty order.

Excluded from the scope of the order are the following:

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) “pull-bows” (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sonobonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting

card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a “belly band” around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to this order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050; and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by this order is dispositive.

Final Determination of No Shipments

In the *Preliminary Results*, Commerce determined that Banduoo, Fujian Rongshu, Rong Shu, and Xiamen Yi-He had no shipments of the subject merchandise during the POR.² As we

have not received any information to contradict our preliminary finding, we continue to find that Banduoo, Fujian Rongshu, Rong Shu, and Xiamen Yi-He did not have any shipments of subject merchandise during the POR and intend to issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results of this review.³

Assessment Rates

Commerce determined, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.⁴ 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.⁵

Further, because we continue to find in these final results that Banduoo, Fujian Rongshu, Rong Shu, and Xiamen Yi-He had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under their antidumping duty case numbers (*i.e.*, at that exporter’s rate) at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue liquidation instructions for Banduoo, Fujian Rongshu, Rong Shu, and Xiamen Yi-He to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) For merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate

³ See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013*, 79 FR at 51306 (August 28, 2014).

⁴ See 19 CFR 351.212(b)(1).

⁵ See section 751(a)(2)(C) of the Act.

published from the most recently completed segment; (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate determined in the less-than-fair-value investigation.⁶ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation 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 doubled 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 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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–21440 Filed 10–1–19; 8:45 am]

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⁶ See *Narrow Woven Ribbons With Woven Selvage from Taiwan and the People’s Republic of China: Amended Antidumping Duty Orders*, 75 FR 56982, 56985 (September 17, 2010).

² See *Preliminary Results*.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-935, C-570-936]

Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

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 U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order and countervailing duty (CVD) order on circular welded carbon quality steel line pipe (welded line pipe) from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order and the CVD order.

DATES: Applicable October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV (AD), and Kristen Johnson, AD/CVD Operations, Office III (CVD), Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0835 and (202) 482-4793, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On January 23, 2009, Commerce published in the *Federal Register* the CVD order on welded line pipe from China.¹ On May 13, 2009, Commerce published in the *Federal Register* the AD order on welded line pipe from China.² On April 1, 2019, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), Commerce published the initiation of the second sunset reviews of the *Orders*³ and the ITC instituted its review of the *Orders*.⁴

¹ See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 74 FR 4136 (January 23, 2009).

² See *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Antidumping Duty Order*, 74 FR 22515 (May 13, 2009).

³ The AD order on welded line pipe from China and CVD order on welded line pipe from China are collectively referred to as the "*Orders*."

⁴ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 12227 (April 1, 2019); see also *Circular Welded*

On April 16 and 17, 2019, Commerce received notices of intent to participate in the sunset reviews from California Steel Industries, Inc., TMK IPSCO, Welspun Tubular LLC, and Zekelman Industries (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).⁵ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as manufacturers in the United States of the domestic like product.⁶

On April 30, 2019, Commerce received complete and adequate substantive responses from the domestic interested parties filed within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁷ Commerce received no substantive response from respondent interested parties. Pursuant to section 751(c)(3)(B) of the Act, Commerce conducted expedited (120-day) sunset reviews of the *Orders*.⁸ On July 5, 2019, the ITC determined to conduct an expedited five-year review of the *Orders*.⁹

As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act, that revocation of the *Orders* on welded line pipe from China would likely lead to continuation or recurrence of dumping or countervailable subsidies. Commerce, therefore, notified the ITC of the magnitude of the margins of

Carbon Quality Steel Line Pipe from China: Institution of Five-Year Reviews, 84 FR 12285 (April 1, 2019).

⁵ See Domestic Interested Parties' Letter, "Notice of Intent to Participate in Second Five-Year Review of the Antidumping Duty Order on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China," dated April 16, 2019 (Notice to Participate AD); see also Domestic Interested Parties' Letter, "Notice of Intent to Participate in Second Five-Year Review of the Antidumping and Countervailing Duty Orders on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China—Request for Extension of Deadline and Acceptance of Submission," dated April 17, 2019 (Notice to Participate CVD); and Commerce's Letter, "Sunset Review of Countervailing Duty Order on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Acceptance of Notice of Intent to Participate," dated April 18, 2019.

⁶ See Notice to Participate AD at 2; see also Notice to Participate CVD at 2.

⁷ See Domestic Interested Parties' Letter, "Second Five-Year Review of the Antidumping Duty Order on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Substantive Response to Notice of Initiation," dated April 30, 2019; see also Domestic Interested Parties' Letter, "Second Five-Year Review of the Countervailing Duty Order on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Substantive Response to Notice of Initiation," dated April 30, 2019.

⁸ See Commerce's Letter, "Sunset Review Initiated on April 1, 2019," dated May 23, 2019.

⁹ See *Circular Welded Carbon Quality Steel Line Pipe from China: Scheduling of Expedited Five-Year Review*, 84 FR 39861 (August 12, 2019).

dumping and net countervailable subsidy rates likely to prevail should these *Orders* be revoked, in accordance with sections 752(b)(3) and (c)(3) of the Act.¹⁰

On September 25, 2019, the ITC published its determination that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) and 752(a) of the Act.¹¹

Scope of the Orders

The merchandise covered by the orders is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe), not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term "carbon quality steel" includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for non-alloy steels imposed in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the term "carbon quality" includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

- (i) 2.00 percent of manganese,
- (ii) 2.25 percent of silicon,
- (iii) 1.00 percent of copper,
- (iv) 0.50 percent of aluminum,
- (v) 1.25 percent of chromium,
- (vi) 0.30 percent of cobalt,
- (vii) 0.40 percent of lead,
- (viii) 1.25 percent of nickel,
- (ix) 0.30 percent of tungsten,
- (x) 0.012 percent of boron,
- (xi) 0.50 percent of molybdenum,
- (xii) 0.15 percent of niobium,
- (xiii) 0.41 percent of titanium,
- (xiv) 0.15 percent of vanadium, or
- (xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by

¹⁰ See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 84 FR 38215 (August 6, 2019); see also *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order*, 84 FR 38213 (August 6, 2019).

¹¹ See *Circular Welded Carbon Quality Steel Line Pipe from China: Determinations*, 84 FR 50473 (September 25, 2019); see also *Circular Welded Carbon Quality Steel Line Pipe from China: Investigation Nos. 701-TA-455 and 731-TA-1149 (Second Review)*, USITC Publication 4955 (September 2019).

the American Petroleum Institute (API) (or comparable foreign specifications) including API A-25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non-graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple-stenciled pipe with an API welded line pipe stencil is covered by the scope of the orders.

Excluded from the scope are pipes of a kind used for oil and gas pipelines that are multiple-stenciled to a standard and/or structural specification and have one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term "painted" does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The welded line pipe products that are the subject of the orders are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders* on welded line pipe from China. U.S. Customs and Border Protection will continue to collect AD and CVD 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 the *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 and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) reviews of these *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to

judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

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: September 25, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019-21444 Filed 10-1-19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-893]

Fine Denier Polyester Staple Fiber (PSF) From the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 23, 2019, the Department of Commerce (Commerce) published the initiation and preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on fine denier polyester staple fiber (PSF) from the Republic of Korea (Korea). For these final results, Commerce continues to find that Toray Advanced Materials Korea, Inc. (TAK) is the successor-in-interest to Toray Chemical Korea, Inc. (TCK).

DATES: Applicable October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4682.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2019, TAK requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), Commerce conduct a CCR of the AD order on PSF from Korea.¹ In its request, TAK argued that it is the successor-in-interest to its wholly-owned subsidiary TCK and, accordingly, Commerce should assign it

the cash deposit rate established for TCK.² TAK stated that, in April 2019, TAK merged with TCK and, as a result of the merger, TAK assumed all of TCK's assets, rights, and liabilities.³

On August 23, 2019, Commerce published the notice of initiation and preliminary results for this CCR, determining that TAK is the successor-in-interest to TCK.⁴ In the *Initiation and Preliminary Results*, we provided all interested parties an opportunity to comment and to request a public hearing regarding our preliminary finding that TAK is the successor-in-interest to TCK.⁵ We received no comments or requests for a public hearing from interested parties within the time period set forth in the *Initiation and Preliminary Results*.⁶

Scope of the Order

The merchandise covered by the order is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of CCR

For the reasons stated in the *Initiation and Preliminary Results*, and because we received no comments from interested parties to the contrary, Commerce continues to find that TAK is the successor-in-interest to TCK. As a result of this determination and consistent with established practice, we find that TAK should receive the cash deposit rate assigned to TCK. Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend entries of subject merchandise produced or exported by TAK at TCK's current cash deposit rate of 0.00 percent.⁷ This cash deposit requirement will be effective upon the publication date of our final results for this CCR and

² *Id.*

³ *Id.*

⁴ See *Initiation and Preliminary Results of Changed Circumstances Review: Fine Denier Polyester Staple Fiber (PSF) From the Republic of Korea*, 84 FR 44279 (August 23, 2019) (*Initiation and Preliminary Results*).

⁵ *Id.*

⁶ *Id.*

⁷ See *Fine Denier Polyester Staple Fiber From the People's Republic of China, India, the Republic of Korea, and Taiwan: Antidumping Duty Orders*, 83 FR 34545 (July 20, 2018).

¹ See TAK's Letter, "Changed Circumstances Review Request," dated May 23, 2019.

shall remain in effect until further notice.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: September 25, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019-21443 Filed 10-1-19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-815, A-549-830, A-552-816]

Welded Stainless Steel Pressure Pipe From Malaysia, Thailand, and the Socialist Republic of Vietnam: Final Results of Expedited First Sunset Reviews of 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 orders on welded stainless steel pressure pipe (WSSPP) from Malaysia, Thailand, and the Socialist Republic of Vietnam (Vietnam) would be likely to lead to continuation or recurrence of dumping, at the levels identified in the “Final Results of Sunset Reviews” section of this notice.

DATES: Applicable October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Ariela Garvett or Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3609 or (202) 482-4162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 2014, Commerce published in the *Federal Register* the notices of the antidumping duty orders on WSSPP from Malaysia, Thailand, and Vietnam.¹ On June 4, 2019, Commerce published the initiation of the first sunset reviews of the *Orders*,

pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² Between June 13, 2019 and June 18, 2019, Commerce received timely and complete notices of intent to participate in these sunset reviews from Bristol Metals, LLC, Felker Brothers Corporation, and Webco Industries, Inc. (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as manufacturers in the United States of the domestic like product.⁴ Between July 1, 2019 and July 5, 2019, the domestic interested parties filed timely and adequate substantive responses, within the deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive substantive responses from any respondent interested party. 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 expedited (120-day) sunset reviews of the *Orders*.

Scope of the Orders

The merchandise covered by these orders are circular welded austenitic stainless steel pressure pipe not greater than 14 inches in outside diameter. For purposes of these orders, references to size are in nominal inches and include

² See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

³ See Domestic Interested Parties' Letters, “Welded Stainless Steel Pressure Pipe from Malaysia: Notice of Intent to Participate,” dated June 13, 2019 (Malaysia Intent to Participate); “Welded Stainless Steel Pressure Pipe from Thailand: Notice of Intent to Participate,” dated June 13, 2019 (Thailand Intent to Participate); and “Welded Stainless Steel Pressure Pipe from Vietnam: Notice of Intent to Participate,” dated June 13, 2019 (Vietnam Intent to Participate). Also, Commerce received a timely and complete notice of intent to participate in these sunset reviews from domestic interested party Primus Pipe & Tube, Inc. (Primus). See Primus' Letter, “Welded Stainless Steel Pressure Pipe from Malaysia, Thailand, and the Socialist Republic of Vietnam: Notice of Intent to Participate,” dated June 18, 2019.

⁴ See Malaysia Intent to Participate at 2; see also Thailand Intent to Participate at 2; Vietnam Intent to Participate at 2; Primus Intent to Participate at 2.

⁵ See Domestic Interested Parties' Letter “Welded Stainless Steel Pressure Pipe from Malaysia: Substantive Response to Notice of Initiation,” dated July 1, 2019; see also Domestic Interested Parties' Letters, “Welded Stainless Steel Pressure Pipe from Thailand: Substantive Response to Notice of Initiation,” dated July 1, 2019; and “Welded Stainless Steel Pressure Pipe from Vietnam: Substantive Response to Notice of Initiation,” dated July 1, 2019. Also, domestic interested party Primus Pipe & Tube, Inc. (Primus), submitted a response, in which it agreed with the substantive responses of the other domestic interested parties. See Primus' Letter, “Welded Stainless Steel Pipe Sunset Review: 2nd Review for China AD/CVD; 1st Review for Vietnam, Thailand and Malaysia; Substantive Response to Notice of Initiation,” dated July 5, 2019.

all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the margins likely to prevail if the *Orders* were to be revoked, is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.⁶ A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://>

⁶ See Memorandum, “Issues and Decision Memorandum for the Expedited First Sunset Reviews of the Antidumping Duty Orders on Welded Stainless Steel Pressure Pipe from Malaysia, Thailand, and the Socialist Republic of Vietnam,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹ See *Welded Stainless Steel Pressure Pipe from Malaysia, Thailand, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 79 FR 42289 (July 21, 2014) (*Orders*).

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 Issues and Decision Memorandum and the electronic version 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, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 167.11 percent for Malaysia, 24.01 percent for Thailand, and 16.25 percent for Vietnam.

Notification Regarding Administrative Protective Orders

This notice also serves as the only 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. Timely notification of the return or destruction of APO materials, or conversion to judicial protective orders 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 and 19 CFR 351.221(c)(5)(ii).

Dated: September 25, 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
 - A. Likelihood of Continuation or Recurrence of Dumping
 - B. Magnitude of the Dumping Margins Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2019–21445 Filed 10–1–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the two companies subject to this administrative review are part of the China-wide entity because neither filed a separate rate application (SRA). The period of review (POR) is February 1, 2018 through January 31, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone at (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on uncovered innerspring units (innersprings) from the People's Republic of China (China).¹ In response, on February 28, 2019, Leggett & Platt, Incorporated (the petitioner) requested a review of two companies, Jietai Machinery Ltd. (HK) (Jietai) and Green Asia Parts, LTD. (Green Asia).² Commerce initiated a review for both companies on May 2, 2019.³ The deadline for interested parties to submit an SRA or separate rate certification (SRC) was June 3, 2019.⁴ No party submitted an SRA or an SRC. On July 18, 2019, Commerce placed U.S. Customs and Border Protection (CBP) data on the record of this review demonstrating that neither Jietai nor Green Asia had entries during

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 2816 (February 8, 2019).

² See Petitioner's Letter, "Uncovered Innerspring Units from the People's Republic of China: Request for Tenth Antidumping Duty Administrative Review," dated February 28, 2019.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 18777 (May 2, 2019) (*Initiation Notice*).

⁴ See *Initiation Notice*.

the POR.⁵ We asked interested parties to file comments on this data and submit comments by July 25, 2019. No party filed comments.

Scope of the Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a "pocket" or "sock" of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 9404.29.9005, 9404.29.9011, 7326.20.0070, 7326.20.0090, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (HTSUS).⁶ The HTSUS subheadings are provided for convenience and customs

⁵ See Memorandum, "10th Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Customs Data of U.S. Imports," dated July 18, 2019.

⁶ Based on a recommendation by CBP, on September 6, 2017, the Department added HTS 7326.20.0090 to the scope. See Memorandum, "Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File, Uncovered Innersprings from the People's Republic of China (A–570–928) and South Africa (A–791–821)," dated September 6, 2017.

purposes only; the written description of the scope of the order is dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

Preliminary Results of Review

Neither of the companies subject to this review filed an SRA. Thus, Commerce preliminarily determines that these companies have not demonstrated their eligibility for separate rate status. As such, Commerce preliminarily determines that the companies subject to review are part of the China-wide entity. In addition, Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative review.⁷ Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁸ In this administrative review, no party requested a review of the China-wide entity. Moreover, we have not self-initiated a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to the review and the rate applicable to the NME entity is not subject to change as a result of this review. The China-wide entity rate is 234.51 percent.

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.⁹ ACCESS is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit in room B8024 of the main Commerce building. Rebuttal briefs, limited to issues raised in the case briefs, must be filed within five days after the time

⁷ 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, 65970 (November 4, 2013).

⁸ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

⁹ See 19 CFR 351.309(c)(1)(ii).

limit for filing case briefs.¹⁰ Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.¹¹

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to Commerce within 30 days of the date of publication of this notice.¹² Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230.¹³ Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.¹⁴ We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide entity rate of 234.51 percent. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of this review in the **Federal Register**.¹⁵

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China 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

¹⁰ See 19 CFR 351.309(d)(1) and (2).

¹¹ See 19 CFR 351.309(c) and (d); see also 19 CFR 351.303 (for general filing requirements).

¹² See 19 CFR 351.310(c).

¹³ See 19 CFR 310(d).

¹⁴ See 19 CFR 351.212(b)(1).

¹⁵ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese 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 Chinese 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 China-wide entity (*i.e.*, 234.51 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: September 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019-21441 Filed 10-1-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-931]

Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the

countervailing duty (CVD) order on circular welded austenitic stainless pressure pipe (WSP) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6071.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2009, Commerce published in the **Federal Register** the CVD order on WSP from China.¹ On August 12, 2014, at the conclusion of the first sunset review, Commerce issued a notice of continuation of the *Order*.² On June 4, 2019, Commerce published the notice of initiation of this second sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).³ On June 13, 2019, Commerce received a notice of intent to participate in the sunset review from Bristol Metals, LLC, Felker Brothers Corporation, and Webco Industries (collectively, domestic interested parties).⁴ On June 18, 2019, Commerce also received a notice of intent to participate in the sunset review from Primus Pipe & Tube, Inc. (Primus

Pipe).⁵ The domestic interested parties and Primus Pipe claimed interested party status under section 771(9)(C) of the Act, as manufacturers in the United States of the domestic like product.⁶

On June 28, 2019, pursuant to 19 CFR 351.218(d)(3)(i), the domestic interested parties filed a timely and adequate substantive response.⁷ On July 5, 2019, Primus Pipe stated its support for the substantive response filed by the domestic interested parties.⁸ Commerce did not receive a substantive response from the Government of China or a respondent interested party to this proceeding. 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 this order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.⁹

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.¹⁰ A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://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 on the internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of a net countervailable subsidy at the following rates:¹¹

Producers/exporters	Net countervailable subsidy ad valorem rate (percent)
Winner Stainless Steel Tube Co. Ltd. (Winner)/Winner Steel Products (Guangzhou) Co., Ltd. (WSP)/Winner Machinery Enterprises Company Limited (Winner HK) (collectively, the Winner Companies)	1.10
Froch Enterprise Co. Ltd. (Froch) (also known as Zhangyuan Metal Industry Co. Ltd.)	299.16
All Others	1.10

¹ See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Countervailing Duty Order*, 74 FR 11712 (March 19, 2009) (*Order*).

² See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 79 FR 32911 (June 9, 2014).

³ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

⁴ See Domestic Interested Parties' Letter, "Welded Stainless Steel Pressure Pipe from China: Notice of Intent to Participate," dated June 13, 2019 (Domestics' Notice to Participate).

⁵ See Primus Pipe's Letter, "Circular Welded Austenitic, Stainless Steel Pressure Pipe from China: Notice of Intent to Participate," dated June 18, 2019 (Primus Pipe's Notice to Participate).

⁶ See Domestics' Notice to Participate at 2; see also Primus Pipe's Notice to Participate at 2.

⁷ See Domestic Interested Parties' Letter, "Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China, Second Review: Substantive Response to Notice of Initiation," dated June 28, 2019.

⁸ See Primus Pipe's Letter, "Welded Stainless Steel Pipe Sunset Review: 2nd Review for China AD/CVD; 1st Review for Vietnam, Thailand and

Malaysia; Substantive Response to Notice of Initiation," dated July 5, 2019.

⁹ For a complete description of the scope of the *Order*, see Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹⁰ *Id.*

¹¹ *Id.*

Notification Regarding Administrative Protective Order

This notice serves as the only 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. 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 the terms of an APO is violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: September 25, 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 Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
 - A. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 - B. Net Countervailable Subsidy Rates Likely to Prevail
 - C. Nature of the Subsidy
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2019-21442 Filed 10-1-19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

Correction

In notice document 2019-13985 beginning on page 31295 in the issue of Monday, July 1, 2019, make the following correction:

On page 31296, in the table, under the Antidumping Duty Proceedings heading, the sixth entry “In-Shell Pistachios A-507-502” should read “IRAN: In-Shell Pistachios A-507-502”.

[FR Doc. C1-2019-13985 Filed 10-1-19; 8:45 am]

BILLING CODE 1301-00-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-930]

Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the antidumping duty order on circular welded austenitic stainless pressure pipe (WSPP) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping, at the level indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0835.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2009, Commerce published in the **Federal Register** the antidumping duty order on WSPP from China.¹ On June 4, 2019, Commerce published the notice of initiation of this sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On June 13, 2019, Commerce received a timely and complete notice of intent to participate in the sunset review from Bristol Metals, LLC, Felker Brothers Corporation, and Webco Industries, Inc. (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ On June 18, 2019, Commerce also received a notice of intent to participate in the sunset review from Primus Pipe & Tube, Inc. (Primus Pipe).⁴ The domestic interested parties and Primus Pipe claimed interested

¹ See *Antidumping Duty Order: Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*, 74 FR 11351 (March 17, 2009) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

³ See Domestic Interested Parties' Letter, “Welded Stainless Steel Pressure Pipe from China: Notice of Intent to Participate,” dated June 13, 2019 (Domestic Parties' Notice to Participate).

⁴ See Primus Pipe's Letter, “Circular Welded Austenitic, Stainless Pressure Pipe from China: Notice of Intent to Participate,” dated June 18, 2019 (Primus Pipe's Notice to Participate).

party status under section 771(9)(C) of the Act as manufacturers in the United States of the domestic like product.⁵

On June 28, 2019, pursuant to 19 CFR 351.218(d)(3)(i), the domestic interested parties filed a timely and adequate substantive response.⁶ On July 5, 2019, Primus Pipe expressed its support for the substantive response filed by the domestic interested parties and incorporated them by reference.⁷ Commerce did not receive a substantive response from any respondent interested party. 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 this order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this order is dispositive.⁸

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Order* and the magnitude of the margins likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.⁹ A list of the topics discussed in the Issues and

⁵ See Domestic Parties' Notice to Participate at 2; see also Primus Pipe's Notice to Participate at 2.

⁶ See Domestic Interested Parties' Letter, “Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China, Second Review: Substantive Response to Notice of Initiation,” dated June 28, 2019.

⁷ See Primus Pipe's Letter, “Welded Stainless Steel Pipe Sunset Review: 2nd Review for China AD/CVD; 1st Review for Vietnam, Thailand and Malaysia; Substantive Response to Notice of Initiation,” dated July 5, 2019.

⁸ For a complete description of the scope of the *Order*, see Memorandum, “Issues and Decision Memorandum for the Expedited Second Sunset Review of the Antidumping Duty Order on Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁹ *Id.*

Decision Memorandum is attached as an Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic 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 on the internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 55.21 percent.

Notification Regarding Administrative Protective Orders

This notice also serves as the only 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. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders 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 results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: September 25, 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 Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues

- A. Likelihood of Continuation or Recurrence of Dumping
- B. Magnitude of the Margin of Dumping Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2019-21446 Filed 10-1-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Voluntary Product Standard 20-15, American Softwood Lumber Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) is soliciting public comment on revisions to Voluntary Product Standard (PS) 20-15, American Softwood Lumber Standard. This standard, prepared by the American Lumber Standard Committee, serves the procurement and regulatory needs of numerous federal, state, and local government agencies by providing for uniform, industry-wide grade-marking and inspection requirements for softwood lumber.

The implementation of the standard also allows for uniform labeling and auditing of treated wood and wood packaging materials. As part of a five-year review process, NIST is seeking public comment and invites interested parties to review the revised standard and submit comments.

DATES: Written comments regarding the proposed revision should be submitted no later than 5:00 p.m. Eastern time on November 1, 2019. Written comments in response to this notice should be submitted according to the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections below. Submissions received after that date may not be considered.

ADDRESSES: An electronic copy (in PDF) of the current standard and proposed revisions can be obtained at the following website <https://www.nist.gov/standardsgov/voluntary-product-standards-program>. Written comments on the standard should be submitted to David F. Alderman, Standards Services Division, NIST, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899-2100; fax (301) 975-4715. Electronic comments may be submitted via email to david.alderman@nist.gov.

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Standards Services

Division, National Institute of Standards and Technology, telephone (301) 975-4019; fax: (301) 975-4715, email: david.alderman@nist.gov.

SUPPLEMENTARY INFORMATION: The proposed revision of the standard has been developed and is being processed in accordance with Department of Commerce provisions in 15 CFR part 10, Procedures for the Development of Voluntary Product Standards, as amended (published June 20, 1986). Under 15 CFR, part 10, the American Lumber Standard Committee (Committee) acts as the Standing Committee for PS 20-15. The Committee is responsible for maintaining, revising, and interpreting the standard and is comprised of producers, distributors, users, and others with an interest in the standard.

Voluntary Product Standard (PS) 20-15 establishes standard sizes and requirements for developing and coordinating the lumber grades of the various species of lumber, the assignment of design values, and the preparation of grading rules applicable to each species. Its provisions include implementation of the standard through an accreditation and certification program; establishment of principal classifications and lumber sizes for yard, structural, and factory/shop use; classification, measurement, grading, and grade-marking of lumber; definitions of terms and procedures to provide a basis for the use of uniform methods in the grading inspection, measurement, and description of softwood lumber; commercial names of the principal softwood species; definitions of terms used in describing standard grades of lumber; and commonly used industry abbreviations. The standard also includes the organization and functions of the Committee, the Board of Review, and the National Grading Rule Committee.

NIST invites public comments on the current standard, PS 20-15, which is available at <https://www.nist.gov/standardsgov/voluntary-product-standards-program>.

Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish comments publicly, unedited and in

their entirety. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

All public comments will be reviewed and considered. Written comments should be submitted in accordance with the **DATES** and **ADDRESSES** sections of this notice. The American Lumber Standard Committee and NIST will consider all responsive comments received and may revise the standard, as appropriate.

Authority: 15 U.S.C. 272.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019-21343 Filed 10-1-19; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Institute of Standards and Technology Performance Review Board Membership

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice lists the membership of the National Institute of Standards and Technology Performance Review Board (NIST PRB) and supersedes the list published on August 27, 2018.

DATES: The changes to the NIST PRB membership list announced in this notice are effective October 2, 2019.

FOR FURTHER INFORMATION CONTACT: Didi Hanlein at the National Institute of Standards and Technology, (301) 975-3020 or by email at desiree.hanlein@nist.gov.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology Performance Review Board (NIST PRB or Board) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and ST-3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure

the fair and equitable treatment of these individuals.

This notice lists the membership of the NIST PRB and supersedes the list published in the **Federal Register** on August 27, 2018 (83 FR 43657).

NIST PRB Members

Joannie Chin (C) (alternate), Deputy Director, Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/19

Marla Dowell (C) (alternate), Director, Communications Technology Laboratory, National Institute of Standards & Technology, Boulder, CO 80305. Appointment Expires: 12/31/21

Kathleen James (C), Chief Administrative Officer, Bureau of Economic Analysis, Washington, DC 20233. Appointment Expires: 12/31/21

Eric Lin (C) (alternate), Director, Material Measurement Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/21

Charles Romine (C), Director, Information Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/21

Carroll Thomas (C), Director, Hollings Manufacturing Extension Partnership Program, National Institute of Standards & Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/19

Authority: 5 U.S.C. 4301 *et seq.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019-21469 Filed 10-1-19; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG909

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys of Lease Areas

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine

Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to Ørsted Wind Power LLC (Ørsted) to take small numbers of marine mammals, by harassment, incidental to high-resolution geophysical (HRG) survey investigations associated with marine site characterization activities off the coast of Massachusetts and Rhode Island in the areas of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS). These areas are currently being leased by the Applicant's affiliates, Deepwater Wind New England, LLC and Bay State Wind LLC respectively, and are identified as OCS-A 0486, OCS-A 0487, and OCS-A 0500 (collectively referred to as the Lease Areas). Ørsted is also planning to conduct marine site characterization surveys along one or more export cable route corridors (ECRs) originating from the Lease Areas and landing along the shoreline at locations from New York to Massachusetts, between Raritan Bay (part of the New York Bight) to Falmouth, Massachusetts.

DATES: This authorization is effective one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as the issued IHA, 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.) 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.

Summary of Request

On March 8, 2019, NMFS received an application from Ørsted for the taking of marine mammals incidental to HRG and geotechnical survey investigations in the OCS-A 0486, OCS-A 0487, and OCS-A 0500 Lease Areas, designated and offered by the Bureau of Ocean Energy Management (BOEM) as well as along one or more ECRs between the southern portions of the Lease Areas and shoreline locations from New York to Massachusetts, to support the development of an offshore wind project. Ørsted’s request is for take, by Level B harassment, of small numbers of 15 species or stocks of marine mammals. The application was considered adequate and complete on May 23, 2019. Neither Ørsted nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued two IHAs to Ørsted subsidiaries Bay State Wind (81 FR 56589, August 22, 2016; 83 FR 36539, July 30, 2018) and Deepwater Wind (82 FR 32230, July 13, 2017; 83 FR 28808, June 21, 2018) for similar activities. Ørsted has complied with all the requirements (e.g., mitigation, monitoring, and reporting) of the issued IHAs.

Description of the Specified Activity

Overview

The purpose of the HRG surveys in the Lease Area and ECRs is to support the characterization of the existing seabed and subsurface geological conditions. This information is necessary to support the final siting, design, and installation of offshore project facilities, turbines and subsea cables within the project area as well as to collect the data necessary to support the review requirements associated with section 106 of the National Historic Preservation Act of 1966, as amended. Underwater sound resulting from

Ørsted’s planned site characterization surveys has the potential to result in incidental take of marine mammals. This take of marine mammals is anticipated to be in the form of harassment and no serious injury or mortality is anticipated, nor is any authorized in this IHA. Ørsted plans to conduct continuous HRG survey operations 24-hours per day (Lease Area and ECR Corridors) using multiple vessels. Based on the planned 24-hour operations, the survey activities for all survey segments would require 666 vessel days total if one vessel were surveying the entire survey line continuously. However, an estimated 5 vessels may be used simultaneously with a maximum of no more than 9 vessels. Therefore, all of the survey will be completed within one year.

A detailed description of the planned survey activities, including types of survey equipment planned for use, is provided in the **Federal Register** notice for the proposed IHA (84 FR 36054; July 26, 2019). Please refer to that **Federal Register** notice for the description of the specified activity.

Comments and Responses

A notice of NMFS’ proposal to issue an IHA was published in the **Federal Register** on July 26, 2019 (84 FR 36054). During the 30-day public comment period, NMFS received comment letters from: (1) The Marine Mammal Commission (Commission); (2) the law firm of Gatzke Dillon & Balance LLP representing the community group ACK Residents Against Wind Turbines (ACK Residents); and (3) a group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, National Wildlife Federation, Defenders of Wildlife, WDC North America, NY4WHALES, Wildlife Conservation Society, Surfrider Foundation, Mass Audubon, Ocean Conservation Research, International Marine Mammal Project of the Earth Island Institute, and IFAW—International Fund for Animal Welfare. NMFS has posted the comments online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

The following is a summary of the public comments received and NMFS’ responses.

Comment 1: The Commission recommended that NMFS review the in-situ measured Level B harassment zones submitted by Ørsted and use them rather than the source levels back-calculated from those measurements to

inform the extents of the Level B harassment zones.

Response: NMFS has reviewed the in-situ measured Level B harassment isopleth zones at length. When NMFS compared the field sound source verification (SSV) measurements to the source levels measured in a controlled experimental setting (i.e., Crocker and Fratantonio, 2016), we found sizable discrepancies for calculated impact distances for the same equipment that cannot be explained solely by absorption and scattering of acoustic energy. We suspect that these discrepancies are due to the beam pattern of many HRG sources, and the likelihood that many field SSVs were measured outside the main lobe of the source at various degrees. Given this information, NMFS elected to rely on the source levels developed by Crocker and Fratantonio (2016) if such information was available for a specific piece of equipment. If equipment had not been tested in a controlled setting, NMFS used source levels provided by the equipment manufacturer.

Comment 2: The Commission recommended that pulse duration and number of pulses should be used to adjust the respective source levels where appropriate. Furthermore, the Commission recommended that both beam width and operating frequency of the various sources should be used to better inform the extents of the Level B harassment zones and that NMFS should assume a consistent 20logR propagation loss for all Level B harassment zone calculations. The Commission recommended that, if SPLrms-based source levels are used to inform the extents of the Level B harassment zones, NMFS consult with BOEM regarding how the SPLrms-based source levels from Crocker and Fratantonio (2016) should be used.

Response: Since the Level B harassment threshold is a pressure measurement, energy accumulation over time is not measured. As such, pulse duration and number of pulses is not relevant to calculating Level B harassment thresholds. NMFS is currently working on an interim guidance document that may be used to establish sound source levels and propagation analyses for all HRG sources. Beam width specifications, operating frequencies and a propagation rate of 20logR will likely be used to estimate harassment zones. NMFS will share the guidance document with the Commission once it has been finalized. Furthermore, NMFS has been in discussions with BOEM regarding appropriate uses of source levels from Crocker and Fratantonio (2016).

Comment 3: The Commission recommended that NMFS work with BOEM to develop methodological and signal processing standards for use by action proponents that conduct HRG surveys.

Response: NMFS understands there is a need for such standards and is working collaboratively with BOEM on this effort.

Comment 4: The Commission recommended that NMFS refrain from using the proposed renewal process. The Commission stated that the renewal process should be used sparingly and selectively, by limiting its use only to those proposed incidental harassment authorizations that are expected to have the lowest levels of impacts to marine mammals and that require the least complex analyses. NGOs asserted that NMFS apparently intends the Renewal process to become the rule rather than an exception, citing to a number of proposed IHAs that included requests for comment on a potential Renewal.

Response: As described in the **Federal Register** notice for the proposed IHA (84 FR 36054; July 26, 2019) and on NMFS' website where information on all MMPA incidental take authorization processes is provided, requests for Renewal IHAs are appropriate only in limited and well-defined circumstances. NMFS does not anticipate many projects that would meet *all* the criteria for a Renewal. Nonetheless, information about the Renewal process and the opportunity to comment on a potential Renewal is included in every notice of a proposed IHA because NMFS cannot predetermine who may seek or qualify for a Renewal. Under section 101(a)(5)(D), it is up to an applicant to request incidental harassment authorization; NMFS includes information about the potential Renewal process in all proposed IHAs because it is at least initially up to the applicant to decide whether they want to seek qualification for a Renewal IHA. NMFS has also explained that the possibility of a Renewal must be included in the notice of the initial proposed IHA for the agency to consider a Renewal request, for the purpose of providing adequate opportunity for public comment on the project during the 30-day comment period on the appropriateness of, and any information pertinent to, a Renewal. Where the commenter has likely already reviewed and commented on the initial proposed IHA and a potential Renewal for these same activities, activities by the same IHA holder in the same geographic area, the abbreviated additional comment period is sufficient for consideration of the results of the preliminary

monitoring report and new information (if any) from the past months.

NMFS' purpose in providing for Renewals is two-fold. First and foremost, the efficiencies in dealing with these simple, low-impact projects (which have already been fully described and analyzed in the initial IHA) frees up limited staff resources to increase focus on more complex and impactful projects and improves our ability to conserve and protect marine mammals by even better evaluating and utilizing new science, evolving technologies, and potential new mitigation measures. In addition, while the agency has always striven for efficiency in regulatory processes, recent directives have called for agencies to put processes in place that reduce regulatory timelines and the regulatory burden on the public. The Renewal process reduces the effort needed by both applicants and NMFS staff for simple, relatively low impact projects with little to no uncertainty regarding effects that have already been fully analyzed by the agency and considered by the public—with no reduction in protection to marine mammals.

Comment 5: The Commission argued that the additional 15-day comment period for Renewals places a burden on reviewers who will need to review the original authorization and numerous supporting documents and then formulate comments very quickly.

Response: NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on Renewal IHAs. **Federal Register** notices for proposed initial IHAs identify the conditions under which a one-year Renewal IHA could be appropriate. This information would have been presented in the *Request for Public Comments* section, which encouraged submission of comments on a potential one-year Renewal in addition to the initial IHA during the initial 30-day comment period. With Renewals limited to another year of identical or nearly identical activity in the same location or a subset of the initial activity that was not completed, this information about the Renewal process and the project-specific information provided in the **Federal Register** notice provides reviewers with the information needed to provide information and comment on both the initial IHA and a potential Renewal for the project. Thus reviewers interested in submitting comments on a proposed Renewal during the additional 15-day comment period will have already reviewed the activities, the species and stocks affected, and the

mitigation and monitoring measures, which will not change from the IHA issued, and the anticipated effects of those activities on marine mammals and provided their comments and any information pertinent to a possible Renewal during the initial 30-day comment period. When we receive a request for a Renewal IHA, if the project is appropriate for a Renewal we will publish notice of the proposed IHA Renewal in the **Federal Register** and provide the additional 15 days for public comment to allow review of the additional documents (preliminary monitoring report, Renewal request, and proposed Renewal), which should just confirm that the activities have not changed (or only minor changes), commit to continue the same mitigation and monitoring measures, and document that monitoring does not indicate any impacts of a scale or nature not previously analyzed.

In addition, to minimize any burden on reviewers, NMFS will directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them direct notice about the opportunity to submit any additional comments.

Comment 6: The Commission and ENGOs expressed concern that the Renewal process discussed in the notice for the proposed IHA is inconsistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA. The ENGOs asserted that IHAs can be valid for not more than one year and both commenters stated that 30 days for comment, including on Renewal IHAs, is required.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. One commenter characterized the agency's request for comments as seeking comment on the Renewal process and the proposed IHA, but the request for comments was not so limited. As noted above, the *Request for Public Comments* section made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the *Request for Public Comments* section) is limited to another year of identical or nearly identical activities in the same location (as described in the *Description of Proposed Activity* section) or the same activities

that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal, should the IHA holder choose to request one in the coming months. Minor changes were previously made to the description of the Renewal process to make this even clearer.

While there will be additional documents submitted with a Renewal request, for a qualifying Renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The Renewal request will also contain a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a Renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

In addition to the IHA Renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for Renewals in the regulations, description of the process and express invitation to comment on specific potential Renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has

ensured that the public "is invited and encouraged to participate fully in the agency decision-making process." Otherwise the NGOs cite to a House of Representatives' Report that discusses the timing of public comment where a request is received for an IHA identical to one issued in the previous year. But the bill that this report accompanied included a specific provision for renewing IHAs, which was not included in the final public law. Therefore it is unknown how the statement in the House Report relates, if at all, to NMFS' implementation of the statutory provisions that in the end were enacted.

Comment 7: NGOs asserted that NMFS must explain why applicants who conduct activities that may result in incidental harassment of marine mammals for more than one year should not be required to apply under section 101(a)(5)(A), which provides for incidental take authorizations for up to five years.

Response: While all take of marine mammals is prohibited under the MMPA unless authorized or exempted, it is up to the operator to determine whether their activities may result in the incidental take of marine mammals and therefore whether they should request incidental take coverage from NMFS. This includes it being the applicant's choice, if their activities will result in harassment only, whether to seek a multi-year authorization under section 101(a)(5)(A) or a one-year authorization, with the potential for a one-year Renewal for certain limited projects, under section 101(a)(5)(D). Where Congress provided both options and stated that authorizations proceed "upon request" of the applicant, NMFS cannot "require" an applicant to pursue authorization under a particular provision if they qualify under either.

Comment 8: ACK Residents indicated that the proposed IHA provided no description of the existing noise and vessel traffic conditions within the impact area of the proposed survey activity. Thus, there is no baseline from which to conduct a proper impact analysis.

Response: Ambient ocean noise levels generally do not exceed 100 dB in the Atlantic waters of the Northeast United States (Haver *et al.*, 2018). Noise from ship traffic can temporarily increase ocean noise in a localized area around the vessel. However, the threshold for Level B harassment is 120 dB. Ambient noise levels below that value or brief noise level increases from vessel traffic in a small, localized area have no impact on our analysis.

Comment 9: ACK Residents and the ENGOS noted that the analysis does not

evaluate the project's contribution to the cumulative take of marine mammals as it fails to account for existing noise and vessel conditions, as well as other wind energy leases near or adjacent to the Ørsted project area. The ENGOS further recommended that the agency carefully analyze the cumulative impacts from the proposed survey activities on the North Atlantic right whale and other protected species.

Response: The MMPA grants exceptions to its broad take prohibition for a "specified activity." 16 U.S.C. 1371(a)(5)(A)(i). Cumulative impacts (also referred to as cumulative effects) is a term that appears in the context of NEPA and the ESA, but it is defined differently in those different contexts. Neither the MMPA nor NMFS's codified implementing regulations address consideration of other unrelated activities and their impacts on populations. However, the preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the environmental baseline. Accordingly, NMFS here has factored into its negligible impact analyses the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.*, as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors (such as incidental mortality in commercial fisheries)). Further, as part of the NEPA process, NMFS drafted an environmental assessment (EA) that analyzed potential impacts from past, present, and reasonably foreseeable future actions. These actions included vessel traffic, geophysical and geotechnical surveys (including those from nearby wind development projects), and military readiness activities. NMFS determined that there were no cumulatively significant impacts to marine mammals and their habitat and the agency signed a finding of no significance (FONSI) in September, 2019. The EA/FONSI is available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-llc-site-characterization-surveys-renewable>., for this activity and NMFS' authorization of incidental take of right whales and other ESA-listed species in the Biological Opinion issued in April 2013 as part of a programmatic consultation between BOEM and NMFS. NMFS' biological opinion was that the

proposed action is not likely to jeopardize the continued existence of identified ESA-listed species. It is also NMFS' opinion that the proposed action is not likely to destroy or adversely modify designated North Atlantic right whale critical habitat.

Comment 10: ACK Residents argued that the analysis did not assess the project's potential to cause vessel strikes and that NMFS should have quantified the number of vessels, project-related vessel miles, or vessel density and then correlated this figure to the number of marine mammals that may be present in the impact area. Without this information, ACK Residents felt it was impossible to determine whether the proposed mitigation measures can be effectively implemented and whether they would successfully reduce take-related impacts on the marine mammal species.

Response: NMFS clearly stated in the proposed IHA that between 5 and 9 survey vessels would be used concurrently. NMFS did analyze the potential effects of use of multiple vessels in the EA. Given the size of the survey area, the relatively low density of marine mammal species authorized for take, slow vessel speeds, and additional required vessel strike avoidance measures, NMFS has determined the likelihood of vessel strike as a result of the surveys to be so low as to be discountable. There have been no reported ship strikes of species during multiple HRG surveys for which NMFS has issued incidental take authorizations. Further, Ørsted shall implement measures (e.g., vessel speed restrictions, separation distances, protected species observer (PSO) monitoring and shutdown requirements) to reduce the risk of a vessel strike to marine mammal species.

Comment 11: ACK Residents noted that the analysis fails to assess noise impacts on whale communication and navigation, both of which rely on echolocation and sound transmission.

Response: In the section on *Potential Effects of the Specified Activity on Marine Mammals and Their Habitat* contained in the proposed IHA, NMFS included a subsection on the potential effects of masking. The comparatively lower source levels and higher frequencies of the sources used in these activities mean that sound attenuates at relatively short distances from the source and is unlikely to meaningfully add to background noise in the area. NMFS determined that while some number of marine mammals may be subject to occasional masking as a result of survey activity, temporary shifts in calling behavior to reduce the effects of

masking, on the scale of no more than a few minutes, are not likely to result in failure of an animal to feed successfully, breed successfully, or complete its life history. Please refer to that section for additional detail.

Comment 12: ACK Residents and the ENGOs commented that the proposed IHA analysis failed to examine the extent to which marine mammals, in response to the noise emitted by the survey equipment and/or the threats posed by project-related vessels, would move out of the project area.

Additionally, they felt that NMFS did not evaluate the potential negative impacts that displaced marine mammals would sustain, including indirect ship strike resulting from increased vulnerability to other vessels not subject to the mitigation measures imposed on Ørsted vessels.

Response: NMFS determined that habitat displacement was not an expected outcome of the specified activity. As discussed in the notice for the proposed IHA (84 FR 36054; July 26, 2019), we anticipate marine mammals may temporarily avoid the area of disturbing noise, but this would be a relatively small area even when multiple survey are operating concurrently. The Level B harassment zone was conservatively estimated to be only 178 m around any participating survey vessels and is actually smaller (maximum of 141 m) as described later in the Estimated Take section. Additionally, any potential effects are expected to be short-term, given the movement of both whales and boats and the small overall area of potential overlap and response. Therefore, habitat displacement is not reasonably likely to occur. Furthermore, if an aggregation of right whales concentrated in a feeding area, they should be readily observed by PSOs and survey vessels would be required to employ vessel strike avoidance measures including maintaining a separation distance of at least 500 m.

Comment 13: ACK Residents pointed out that NMFS omitted a required element of a proper harassment assessment—namely, that the agency failed to correlate the anticipated take of each individual marine mammal species to its overall stock or population.

Response: As a result of the analysis of the anticipated effects and authorized take described in the *Negligible Impact Determination* section, NMFS found that that the total marine mammal take from Ørsted's planned HRG survey activities will have a negligible impact on each of the affected marine mammal species or stocks. Specifically, the nature and scale of the take authorized

for this activity is such that no impacts to reproduction or survival of any individuals are predicted, and therefore no impacts to the stocks are anticipated to follow. Additionally, NMFS concluded in the *Small Numbers* section that the numbers of marine mammals authorized for take, for all species and stocks, would be considered small relative to the relevant stocks or populations. Please refer to that section for additional detail.

Comment 14: ACK Residents expressed concern that the operating frequency assumed in the analysis may not be the one used in the field during the actual survey work and, therefore, much of the analysis is meaningless.

Response: The operating frequencies used as part of the analysis were supplied by the equipment manufacturer. NMFS assumed that the primary operating frequency was the midpoint between the high and low ranges of HRG equipment. NMFS acknowledges that the actual operating frequencies utilized for specific equipment during survey activities may not be the midpoints. However, use of other frequencies within the manufacturers' supplied ranges would have no effect on our analysis, including Level B harassment zone sizes or calculated take numbers. In this case, sound frequency was not used as a factor in the determination of Level B harassment isopleths, which was a conservative choice, given that the sound from higher frequency sources (such as those used here) actually attenuates more quickly, resulting in smaller isopleths and harassment zones.

Comment 15: Since NMFS is authorizing 10 right whale takes by Level B harassment, ACK Residents contend that NMFS must lack confidence that the mitigation measures will work.

Response: NMFS understands that the required mitigation and monitoring measures may not be 100 percent effective under all conditions. Due to night time operations over an extended period (666 vessel days), NMFS acknowledges that a limited number of right whales may enter into the Level B harassment zone without being observed. Therefore, NMFS has conservatively authorized take of 10 right whales by Level B harassment.

Comment 16: ACK Residents noted that the analysis needs to disclose is whether the surveys will take place during those times of year when each marine mammal species is expected to be present in the project impact area. That information is not provided.

Response: NMFS indicated that survey activities for all survey segments

would require 666 vessel days total if one vessel were surveying the entire survey line. Activities are likely to be continuous throughout the one-year effective period. To account for seasonal density variance, density data were mapped within the boundary of the survey area for each segment using geographic information systems. For each survey segment, the maximum densities for each season (spring, summer, fall and winter) as reported by Roberts *et al.* (2016b; 2017; 2018), were averaged to establish an annual density for the entire year.

Comment 17: According to ACK Residents, recent data not included in the analysis shows that more right whales are moving into or near the project area. This means that the number of right whales potentially affected by the project is likely higher than assumed in the analysis. Additionally, the ENGOs felt that the density maps produced by Roberts *et al.* (2016) did not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast and therefore should not be the only information source relied upon when estimating take.

Response: NMFS has determined that the data provided by Roberts *et al.* (2016; 2017; 2018) represents the best available information concerning marine mammal density in the survey area and has used it accordingly. NMFS has considered other available information, and determined that it does not contradict the information provided by Roberts *et al.* (2016; 2017; 2018). The sources suggested by the commenters do not provide data in a format that is directly usable in an acoustic exposure analysis. The references were either anecdotal or did not contain density information. Additionally, and as explained in greater detail in the Estimated Take section, a recent marine mammal monitoring report covering Lease Area OCS-A 0500 and nearby ECR corridors did not record any confirmed right whale sightings from 3 separate HRG survey vessels over a combined period of 376 vessel days. We will continue to review data sources, including those recommended by commenters for consideration for their suitability for inclusion in future analyses to ensure the use of best available science in our analyses.

Comment 18: ACK Residents and the ENGOs alleged that NMFS did not explain or analyze the extent to which the planned “concurrent” use of HRG survey equipment changes the noise analysis or increases the potential take risk to marine mammals.

Response: NMFS addressed the concurrent use of multiple survey vessels and equipment in the EA. Given the size of the survey area, these vessels may be operating at considerable distance from one another. In some instances, however, vessels would be no closer than 500 m to each other. Since the largest Level B harassment isopleth is 178 m, there is no chance that the sound fields exceeding the Level B harassment threshold generated by each vessel would overlap and either increase the predicted received sound levels above established thresholds or increase cumulative exposure beyond what has been modelled. Furthermore, multiple vessels on the water means that more PSOs would be active and, therefore, would be more capable of detecting species of concern. This information would be distributed among operating survey vessels, potentially reducing impacts to such species. Importantly, the use of multiple survey vessels as well as autonomous survey vehicles (ASVs) concurrently will decrease the total number of days during which anthropogenic sound is introduced into the marine environment.

Comment 19: ACK Residents asserted that since right whales can dive deeply and spend significant amount of time underwater, they may not be visually detected, even by trained PSOs using high-powered binoculars and night-vision goggles.

Response: NMFS finds visual observation by PSOs to be generally effective in detecting and helping to mitigate less cryptic (*e.g.*, non-deep divers), larger marine mammal species (such as right whales), especially in shallower waters such as those in the activity area.

Comment 20: ENGOs recommended that NMFS impose a restriction on site assessment and characterization activities that have the potential to injure or harass the North Atlantic right whale (*i.e.*, source level >180 dB re 1 uPa) minimally from November 1st to May 14th in the Lease Areas.

Response: In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, 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; and (2) the practicability of the measures for applicant implementation, which may consider such things as relative cost and impact on operations.

NMFS is concerned about the status of the North Atlantic right whale population given that a UME has been in effect for this species since June of 2017 and that there have been a number of recent mortalities. While NMFS expects that the effects of a single HRG survey would be less impactful than those of some other larger sources of concern, the potential impacts of multiple HRG vessels (5–9 according to Ørsted) operating simultaneously in areas of higher right whale density are not well-documented and warrant caution. NMFS reviewed the best available right whale abundance data for the planned survey area extending from southern New England to southern Long Island (Roberts *et al.* 2017). We determined that right whale abundance is significantly higher in the period starting in late winter and extending to late spring in the eastern portion of the survey area.

Ørsted anticipates that approximately 25% of the Lease Area vessel days (78) may occur between March and June, the months in which right whale density in the Lease Areas is highest. Also, no more than 5% of the total vessel days (33) are anticipated for the ECR area north of the lease areas between February and April, an area and season in which right whale densities are also comparatively higher. While this greater detail regarding the likely spatio-temporal distribution of surveys across the action area alleviates some concerns (*i.e.*, showing that survey are days are not disproportionately concentrated in the high-density areas and times), NMFS worked with Ørsted to further limit impacts by limiting the number of surveys that will operate concurrently in the Lease Areas in high-density months. Ørsted plans to operate one to two vessels concurrently, with up to three vessels for short periods of time—and has committed to operate no more than 3 HRG survey vessels concurrently from March through June within the three identified lease areas (OCS-A 0486, 0487, and 0500) and ECR areas north of the lease areas up to, but not including, coastal and bay waters. This requirement is included in the IHA.

Limiting the number of survey vessels operating concurrently during high-density months in high-density areas will help to reduce both the number and intensity of right whale takes. Regarding practicability, the timing of Ørsted’s surveys is driven by a complex suite of factors including availability of vessels and equipment (which are used for other surveys and by other companies), other permitting timelines, and the timing of certain restrictions associated with fisheries gear, among other things.

Nonetheless, Ørsted has indicated that there is enough flexibility to revise their survey plan such that they can both accommodate this measure and satisfy their permitting and operational obligations, and we do not anticipate that these restrictions will impact Ørsted's ability to execute their survey plan within the planned 666 vessel days. Therefore, NMFS determined that this required mitigation measure is sufficient to ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 21: The ENGOs recommended that geophysical surveys should commence, with ramp up, during daylight hours only to maximize the probability that marine mammals are detected and confirmed clear of the exclusion zone. They state that if a right whale is detected in the EZ at night and the survey shuts down, the survey should not resume until daylight hours.

Response: We acknowledge the limitations inherent in detection of marine mammals at night. However, similar to the discussion above regarding time closures, restricting the ability of the applicant to ramp-up surveys only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary, which could result in the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus the restriction suggested by the commenters would not be practicable for the applicant to implement. In addition, potential impacts to marine mammals authorized for take would be limited to short-term behavioral responses. Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. No injury is expected to result even in the absence of mitigation, given the very small estimated Level A harassment zones. In the event that NMFS imposed the restriction suggested by the commenters, vessels would potentially be on the water for an extended time introducing noise into the marine environment. Therefore, in addition to practicability concerns for the applicant, the restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have not

demonstrated that such a requirement would result in a net benefit. In consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS has determined that restricting survey start-ups to daylight hours is not warranted in this case.

Comment 22: The ENGOs stated that is incumbent upon the agency to address potential impacts to other endangered and protected whale species, particularly in light of the UMEs declared for right whales, humpback whales and minke whales, as well as the several strategic and/or depleted stocks of small cetaceans that inhabit the region.

Response: NMFS acknowledges the UMEs for minke whales since January 2017; north Atlantic right whales since June 2017; humpback whales since January 2016, and pinnipeds since July 2018. We discuss the potential impacts of HRG surveys on species for which UMEs have been declared and for which take is authorized in the *Negligible Impact Determination* section. Please refer to that discussion.

Comment 23: The ENGOs urged NMFS to fund analyses of recently collected sighting and acoustic data for all data-holders; and continue to fund and expand surveys and studies to improve our understanding of distribution and habitat use of marine mammals.

Response: We agree with the ENGOs that analyses of recently collected sighting and acoustic data, as well as continued marine mammal surveys, are warranted, and we welcome the opportunity to participate in fora where implications of such data for potential mitigation measures would be discussed; however, we do not have broad statutory authority or the ability to require that all "data-holders" fund such analyses and surveys. Additionally, NMFS will fund pertinent surveys based on agency priorities and budgetary considerations.

Comment 24: The ENGOs indicated that NMFS should review and approve night vision and infrared equipment prior to reliance on this untested technology to reduce survey risk. Additionally, the ENGOs commented that NMFS should encourage developers to partner with scientists to collect data that would increase the understanding of the effectiveness of night vision and infrared technologies in the Northeast region.

Response: NMFS agrees with the ENGOs that improved data on relative effectiveness of night vision and infrared technologies would be beneficial and could help to inform future efforts

at detection of marine mammals during nighttime activities. Currently, there are no existing standards that NMFS could use to approve night vision and infrared equipment. Right whales can be seen at night from a considerable distance, depending on conditions. Note that in a recent IHA monitoring report submitted to NMFS after completion of an HRG survey off the coast of Delaware (Deepwater Wind, 83 FR 28808, June 21, 2018) a single confirmed right whale and a second probable right whale were observed at night by infra-red cameras at distances of 1,251 m and approximately 800 m respectively.

The commenters have not provided us with any specific recommendations to evaluate beyond a broad recommendation. However, we will encourage coordination and communication between offshore wind developers and researchers on effectiveness of night vision and infrared technologies, to the extent possible. While we acknowledge that no technology is 100% effective either during daylight or nighttime hours, the equipment used here will enhance PSO's ability to detect marine mammals at night and the fact that not all will be detected is accounted for in the authorized take.

Comment 25: The ENGOs maintained that the minimum radii of EZs should be increased and maintained throughout survey activities. NMFS must require use of sufficient monitoring practices to ensure a 500-m EZ for all marine mammals around all vessels conducting activities with noise levels that could result in injury or harassment to these species. PSOs should also, to the extent feasible, monitor beyond the minimum 500-m EZ to an extended 1,000 m-EZ for North Atlantic right whales. Additionally, the ENGOs recommended that survey activity must be shut down upon the visual or acoustic detection of a North Atlantic right whale.

Response: Regarding the recommendation for a 1,000 m EZ specifically for North Atlantic right whales, we have determined that the 500-m EZ, as required in the IHA, is sufficiently protective. We note that the 500-m EZ exceeds by almost three times the modeled distance to the largest Level B harassment isopleth (178 m). Thus for North Atlantic right whales detected by PSOs, all forms of incidental take (both injury and behavioral harassment) would be avoided. For the same reason we are not requiring shutdown if a right whale is observed beyond 500 m, presumably at any distance. Similarly, the recommended 500-m EZ for other species is overly conservative when a

178 m isopleth has been modeled for behavioral harassment.

Comment 26: The ENGOs recommended that a combination of visual monitoring by PSOs and passive acoustic monitoring (PAM) should be used at all times.

Response: There are several reasons why we do not think the use of PAM is warranted for surveys using the HRG sound sources planned for use by Ørsted. PAM can be an important tool for augmenting detection capabilities in certain circumstances, however, its utility in further reducing impact for Ørsted's HRG activities is very limited. First, for this activity, the area expected to be ensonified above the level B harassment threshold are relatively small (and as described in the Take Estimate section, even smaller than indicated in the proposed IHA, a maximum of 141 m as described in the Estimated Take section). PAM is only capable of detecting animals that are actively vocalizing while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM will be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging for under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which make estimating their localization difficult. Also, the ability of PAM to detect baleen whale vocalizations is further limited due to being deployed from the stern of a vessel, which puts the PAM hydrophones in proximity to propeller noise and low frequency engine noise that can mask the low frequency sounds emitted by baleen whales, including right whales. Last, as noted previously, Ørsted has detected low numbers of marine mammals in previous surveys, and even lower numbers necessitating a shutdown because of the small size of the zone. As an example, the recent monitoring report submitted for Lease Area OCS-A 0500 and nearby ECR corridors recorded 496 sightings of marine mammals over 376 vessel days. (A sighting could be a single animal or group of animals observed in the same area at the same time.) However, only 51 of the sightings required any type of mitigation action (44 shutdown and 7 delay events). Given the low sightings rate (1.3 per vessel day) and mitigation rate (1 mitigation action per 7.3 vessel days), the addition of this detection capability (assuming that it would add as many shutdowns again as assumed for visual mitigation, which may be an overestimate) is likely to have only a

nominal effect on reducing potential impacts to marine mammals in the survey area.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency species), and the cost and impracticability of implementing a PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 27: The ENGOs recommended that shift schedule of the NMFS-approved PSOs aboard the survey vessel must also be adjusted to a minimum of four PSOs following a two-on two-off rotation, each responsible for scanning no more than 180° of the EZ at any given time.

Response: Previous IHAs issued for HRG surveys have required that a single PSO must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours. A number of marine mammal monitoring reports submitted to NMFS have effectively employed this approach. NMFS sees no reason to deviate from this practice at the present time, as any added benefit would be limited and uncertain versus the known added cost. However, NMFS will require the use of 2 PSOs any time that (ASVs) are being used as well as during night operations.

Comment 28: The ENGOs recommended that all vessels operating within the survey area, including support vessels, should maintain a speed of 10 knots or less during the entire survey period including those vessels transiting to/from the survey area.

Response: NMFS has analyzed the potential for ship strike resulting from Ørsted's activity and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators comply with 10 knot (18.5 kilometer (km)/hour) or less speed restrictions in any SMA or Dynamic Management Area (DMA); a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed within 100 m of an underway vessel; a

requirement that all survey vessels maintain a separation distance of 500-m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500-m minimum separation distance has been established; and a requirement that, if a North Atlantic right whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. As noted previously, occurrence of vessel strike during surveys is extremely unlikely based on the low vessel speed of approximately 4 knots (7.4 km/hour) while transiting survey lines.

Comment 29: The ENGOs suggested that it should be NMFS' top priority to consider any initial data from State monitoring efforts, passive acoustic monitoring data, opportunistic marine mammal sightings data, and other data sources, and to take steps now to develop a dataset that more accurately reflects marine mammal presence so that it is in hand for future IHA authorizations and other work.

Response: NMFS will review any recommended data sources and will continue to use the best available information. We welcome future input, even outside the comment period for this particular IHA, from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in New England waters.

Comment 30: The ENGOs asserted that collectively, the agency's assumptions regarding mitigation effectiveness are unfounded and cannot be used to justify any reduction in the number of takes authorized. The ENGOs stressed that NMFS must not adjust take numbers for endangered North Atlantic right whales based on arbitrary and capricious assumptions regarding the effectiveness of unproven mitigation measures which include the following: (i) The agency's reliance on a 160 dB threshold for behavioral harassment is not supported by best available scientific information in other low- to mid-frequency sources that indicates Level B takes will occur with near certainty at exposure levels well below the 160 dB threshold; (ii) the best available scientific information on habitat use of the Lease Areas, including as an increasingly important foraging site, has not been considered by the

agency (iii) the geographic and temporal extent, and the 24-hour nature, of the survey activities proposed to be authorized; (iv) the assumption that marine mammals will take measures to avoid the sound even though studies have not found avoidance behavior to be generalizable among species and contexts, and even though avoidance may itself constitute take under the MMPA; and (v) the monitoring protocols the agency prescribes for the EZ are under-protective. The ENGOs pointed out that the mitigation measures in the proposed IHA are overall less protective than previous IHA authorizations issued for the region.

Response: The five comments provided by the ENGOs are addressed individually below.

(i) NMFS acknowledges that the potential for behavioral response to an anthropogenic source is highly variable and context-specific and acknowledges the potential for Level B harassment at exposures to received levels below 160 dB rms. Alternatively, NMFS acknowledges the potential that not all animals exposed to received levels above 160 dB rms will not respond in ways constituting behavioral harassment. There are a variety of studies indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a received level (RL). The studies cited in the comment (Nowacek *et al.*, 2004 and Kastelein *et al.*, 2012 and 2015) showed there were behavioral responses to sources below the 160 dB threshold, but also acknowledge the importance of context in these responses. For example, Nowacek *et al.*, 2004 reported the behavior of five out of six North Atlantic right whales was disrupted at RLs of only 133–148 dB re 1 μ Pa (returning to normal behavior within minutes) when exposed to an alert signal. However, the authors also reported that none of the whales responded to noise from transiting vessels or playbacks of ship noise even though the RLs were at least as strong, and contained similar frequencies, to those of the alert signal. The authors state that a possible explanation for whales responded to the alert signal and did not respond to vessel noise is due to the whales having been habituated to vessel noise, while the alert signal was a novel sound. In addition, the authors noted differences between the characteristics of the vessel noise and alert signal which may also have played a part in the differences in responses to the two noise types. Therefore, it was concluded that the signal itself, as opposed to the RL, was

responsible for the response. DeRuiter *et al.* (2012) also indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Finally, Gong *et al.* (2014) highlighted that behavioral responses depend on many contextual factors, including range to source, RL above background noise, novelty of the signal, and differences in behavioral state. Similarly, Kastelein *et al.*, 2015 (cited in the comment) examined behavioral responses of a harbor porpoise to sonar signals in a quiet pool, but stated behavioral responses of harbor porpoises at sea would vary with context such as social situation, sound propagation, and background noise levels.

NMFS uses 160 dB (rms) as the exposure level for estimating Level B harassment takes and is currently considered the best available science, while acknowledging that the 160 dB rms step-function approach is a simplistic approach. However, there appears to be a misconception regarding the concept of the 160 dB threshold. While it is correct that in practice it works as a step-function, *i.e.*, animals exposed to received levels above the threshold are considered to be “taken” and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

Overall, we reiterate the lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal’s behavioral mode when it hears sounds (*e.g.*, feeding, resting, or migrating), prior experience, and biological factors (*e.g.*, age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given

received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.*, 2007; Ellison *et al.*, 2012; Bain and Williams, 2006). Further, we note that the sounds sources and the equipment used in the specified activities are outside (higher than) of the most sensitive range of mysticete hearing.

There is currently no agreement on these complex issues, and NMFS followed the practice at the time of submission and review of this application in assessing the likelihood of disruption of behavioral patterns by using the 160 dB threshold. This threshold has remained in use in part because of the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities. We note that the seminal review presented by Southall *et al.* (2007) did not suggest any specific new criteria due to lack of convergence in the data. NMFS is currently evaluating available information towards development of guidance for assessing the effects of anthropogenic sound on marine mammal behavior. However, undertaking a process to derive defensible exposure-response relationships is complex (*e.g.*, NMFS previously attempted such an approach, but is currently re-evaluating the approach based on input collected during peer review of NMFS (2016)). A recent systematic review by Gomez *et al.* (2016) was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS acknowledges that there may be methods of assessing likely behavioral response to acoustic stimuli that better capture the variation and context-dependency of those responses than the simple 160 dB step-function used here, there is no agreement on what that method should be or how more complicated methods may be implemented by applicants. NMFS is committed to continuing its work in developing updated guidance with regard to acoustic thresholds, but pending additional consideration and process is reliant upon an established threshold that is reasonably reflective of available science.

(ii) The ENGOs contended that NMFS did not use the best available scientific information on habitat use of the Lease Areas, including areas that are increasingly important foraging sited. The ENGOs referenced articles by Kraus *et al.* (2016) and Leiter *et al.* (2017) which examined right whale occurrence in offshore wind energy areas near

Massachusetts and Rhode Island. To identify areas with statistically higher animal clustering than surrounding regions, a hot spot analysis was performed. Several hot spots were identified within the Lease Areas. However, the right whale densities in the study area ranged from 0.0008 (Winter 2014) to 0.0035 (Spring 2012) animals per km². The densities from these references are generally lower than those used in our own analysis which ranged from 0.00379 (Lease area OCS-A0487) to 0.00759 (ECR corridors) animals per km². The densities used by NMFS from Roberts *et al.* (2016; 2017; 2018) are more conservative or protective than those measured in the referenced right whale hot spot papers.

(iii) Given the geographic and temporal extent of the survey area as well as continuous 24-hour operations, the ENGOs question the effectiveness of the mitigation measures proposed to be authorized. They specifically recommended that seasonal restrictions should be established and consideration should be given species for which a UME has been declared. NMFS is requiring Ørsted to comply with seasonal restrictions limiting the number of vessels that can operate concurrently in the Lease Areas and the area north of that (higher density areas for right whales) during the higher density months of the year. Please refer to the response to Comment 19 for additional detail. Furthermore, we have established a 500-m shutdown zone for right whales which is precautionary considering the Level B harassment isopleth for the largest source utilized in the specified activities for this IHA is was initially estimated at 178-m. Further, actual isopleths are no greater than 141 m for one omnidirectional HRG device (Applied Acoustics Dura-Spark 400 System) and are considerably less for a number of other HRG devices employing downward facing beams at various angles. We determined that the Level B harassment isopleths are smaller than 178 m (maximum of 141 m) for the entire survey area. After accounting for these smaller zones the calculated right whale exposures decreased from 100 to 47 animals. At these distances, monitoring by PSOs is expected to be highly effective. Given these factors, we are confident in our decision to authorize 10 takes by Level B harassment. Additionally, similar mitigation measures have been required in several previous HRG survey IHAs and have been successfully implemented.

(iv) The commenters disagreed with NMFS' assumption that marine mammals move away from sound

sources. The ENGOs claimed that studies have not found avoidance behavior to be generalizable among species and contexts, and even though avoidance may itself constitute take under the MMPA. Importantly, the commenters mistakenly seem to believe that the NMFS' does not consider avoidance as a take, and that the concept of avoidance is used as a mechanism to reduce overall take—this is not the case. Avoidance of loud sounds is a well-documented behavioral response, and NMFS often accordingly accounts for this avoidance by reducing the number of injurious exposures, which would occur in very close proximity to the source and necessitate a longer duration of exposure. However, when Level A harassment takes are reduced in this manner, they are changed to Level B harassment takes, in recognition of the fact that this avoidance or other behavioral responses occurring as a result of these exposures are still take. NMFS does not reduce the overall amount of take as a result of avoidance.

(v) For additional discussion, NMFS directs the reader to the Potential Effects section. 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). Avoidance responses have more commonly been reported for baleen whales. Avoidance responses to airgun sounds at received levels of 160–170 dB have been reported for migrating gray whales (Malme *et al.*, 1983), bowhead whales (Richardson *et al.*, 1986), and migrating humpback whales (McCauley *et al.*, 2000). Fin whales moved away from a 10-day seismic survey in the Mediterranean and were spatially displaced for at least 14 days after the seismic airgun shooting period (Castellote *et al.*, 2012). Harbor porpoises have been reported to exhibit an avoidance response to the impulsive sound of pile driving at distances of 20 km or more and for up to 3 days (Tougaard *et al.*, 2009; Thompson *et al.*, 2010; Brandt *et al.*, 2011). 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 in an affected region if habituation to the presence of the sound does not occur (*e.g.*, Bejder *et al.*, 2006; Teilmann *et al.*, 2006). However, long-

term displacement is not expected to occur as a result of this HRG survey. While there is no direct evidence that noise from HRG surveys will result in movement away from the sound source, the studies above would indicate that at least some cetacean species engage in avoidance behavior when exposed to underwater noise at certain levels and frequencies. As described above, however, avoidance behavior is likely dependent on additional contextual factors that are not well-understood at this time.

(vi) The ENGOs felt that that the monitoring protocols prescribed by NMFS are under-protective while noting that the protocols are less protective than those required as part of previous IHA authorizations covering HRG surveys. NMFS believes that implementation of the required monitoring protocols are adequate to ensure the least practicable adverse impact on the effected species or stocks and their habitat and, further, as we have described, we have determined that the number of animals taken will be small and that potential impacts to any stocks will be negligible. While some previously issued IHAs have required the use of PAM, NMFS described why we do not believe this is necessary in our response to Comment 25. Previous IHAs did require a 500-m right whale exclusion zone, a 200-m exclusion zone for listed whale species, 25-m zone for harbor porpoises and no exclusion zone for non-listed species. The IHA issued to Ørsted also has a 500-m right whale exclusion zone. However, it also has a 100-m exclusion zone for all other listed and non-listed marine mammal species, including harbor porpoise. While the previous IHAs offered slightly increased protection for listed whale species (200 m vs 100 m), the current IHA offers increased protection for all other non-listed species (0 m vs 100 m) including harbor porpoise (25 m vs 100 m). Importantly, the previous IHA had a significantly larger Level B harassment zone (447 m), resulting in a much larger area within which marine mammals might be harassed outside of the exclusion zone. Given this information it is not clear how the previous IHAs can be categorized as being more protective than the current IHA.

As described above, the number of right whales that could actually experience Level B harassment is smaller than what is projected assuming a 178-m isopleth. The HRG device with the largest omnidirectional isopleth (141 m) is the Applied Acoustics Dura-Spark 400 System. Much of the remaining HRG equipment uses focused beams with further reduces the calculated

Level B isopleths since these distances were derived assuming that all sound sources were omnidirectional. When 141-m isopleth associated with the Applied Acoustics Dura-Spark 400 System is taken into consideration (versus the 178 m considered in the proposed IHA), the calculated take of right whales is reduced from 100 to 47 exposures.

The 500-m shutdown zone for right whales is highly conservative. When the directionality of the sound source is considered, the largest Level B harassment isopleth for this IHA is 141 m with much of remaining directional HRG equipment having behavioral disturbance zones that are considerably smaller. At these reduced distances, PSOs should be able to successfully monitor for right whales and other species, even during night operations with the assistance of night vision and infra-red devices. As noted in the response to Comment 18, visual observation by PSOs is generally effective in detecting larger marine mammal species, including right whales, especially in shallower waters.

Given the low occurrence of right whale observations as depicted in the recent marine mammal monitoring report (0 confirmed sightings) over an extended period (376 days), the substantially reduced Level B harassment zone sizes and associated exposure estimates, the seasonal reduction in the number of survey vessels permitted to operate concurrently in high density areas (3), as well as the expected efficacy of mitigation and monitoring measures, a reduction in the calculated exposure estimates of 47 right whales (initially 100 exposures as described previously) to 10 is justifiable.

Changes From Proposed to Final Authorization

NMFS has made several minor changes to the mitigation and monitoring measures since the publication of the proposed IHA which are listed below:

- NMFS has removed several genera (*i.e.*, *Lagenodelphis*, *Lissodelphis*, *Steno*) from the list of species for which the shutdown requirement is waived. The removed species do not occur in New England waters.
- NMFS had identified a 100-m exclusion zone for large cetaceans (*i.e.*, humpback whale, sperm whale, minke whale, pilot whale, Risso's dolphin) in the proposed IHA while in the final IHA the 100-m shutdown zone has been revised to include all marine mammals. NMFS inadvertently excluded revised language from text of the proposed IHA.

- NMFS is requiring Ørsted to restrict concurrent operation of survey vessels to a maximum of three from March through June within the three lease areas and in ECR areas north up to, but not including, coastal and bay waters. This change was made in consideration of a public comment.

- The final IHA states that if an animal is sighted within or approaching the pre-clearance zones the applicant must not use HRG equipment until the animals is observed leaving the zone or a period of 15 minutes has passed with no further sightings of small cetaceans or seals. The proposed IHA indicated that the 15 minute waiting period was only applicable to small cetaceans. Seals have reportedly been observed approaching or in close proximity to survey vessels. Therefore, this language has been added to provide more specific guidance to PSOs.

- The proposed IHA indicated that the shutdown requirement is waived for several small delphinids of specified genera if they enter into the exclusion zone. In the final IHA this measure has been clarified and now states that if a delphinid from one of the specified genera is visually detected approaching the vessel (*i.e.*, to bow ride) or towed survey equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown. If delphinids from the above genera are observed within or entering the relevant EZ but do not approach the vessel or towed survey equipment, shutdown is required. This revision emphasizes that the shutdown waiver only applies to specified delphinids when they are observed approaching a vessel.

- The proposed IHA indicated that a dedicated ASV PSO must be stationed on the bridge of the survey vessel and monitor the real-time picture from the thermal/HD camera installed on the front of the ASV, when it is in use. However, the proposed bridge monitoring screen may interfere with night vision capabilities of the captain and other crew working on the bridge. Therefore, as part of the final IHA the dedicated ASV PSO will monitor real-time video during nighttime operations and will usually be stationed near the ASV operator. During daytime surveys the dedicated ASV will be located on the survey vessel in a position that provides a clear, unobstructed view of the ASV's exclusion and monitoring zones.

- In both the draft and final IHA, NMFS requires that independent observers must be utilized. In the final IHA, NMFS added that non-independent observers may be approved, on a case-by-case basis, for limited, specific duties in support of approved, independent PSOs. On smaller vessels engaged in shallow water surveys, limited space aboard the vessel may not allow for two or more PSOs. In that case, trained non-independent observers may take over if the lead PSOs needs to take a brief break (*e.g.*, bathroom).

Description of Marine Mammals in the Area of the Specified Activity

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

We expect that the species listed in Table 1 will potentially occur in the project area and will potentially be taken as a result of the planned project. Table 1 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 (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in

NMFS' U.S. Atlantic Ocean SARs (e.g., Hayes *et al.*, 2019). All values presented in Table 1 are the most recent available

at the time of publication and are available online at: <https://www.fisheries.noaa.gov/national/>

[marine-mammal-protection/marine-mammal-stock-assessment-reports-region](https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region).

TABLE 1—MARINE MAMMAL KNOWN TO OCCUR IN SURVEY AREA WATERS

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae: North Atlantic Right whale	<i>Eubalaena glacialis</i>	Western North Atlantic (WNA)	E/D; Y	451 (0; 445; 2017)	0.9	5.56
Family Balaenopteridae (rorquals): Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-/-; N	896 (0; 896; 2012)	14.6	9.7
Fin whale	<i>Balaenoptera physalus</i>	WNA	E/D; Y	1,618 (0.33; 1,234; 2011)	2.5	2.5
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E/D; Y	357 (0.52; 236)	0.5	0.8
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian East Coast	-/-; N	2,591 (0.81; 1,425)	14	7.7
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae: Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E/D; Y	2,288 (0.28; 1,815)	3.6	0.8
Family Delphinidae: Long-finned pilot whale	<i>Globicephala melas</i>	WNA	-/-; Y	5,636 (0.63; 3,464)	35	38
Bottlenose dolphin	<i>Tursiops spp.</i>	WNA Offshore	-/-; N	77,532 (0.40; 56,053; 2016)	561	39.4
Short beaked common dolphin.	<i>Delphinus delphis</i>	WNA	-/-; N	70,184 (0.28; 55,690; 2011)	557	406
Atlantic white-sided dolphin.	<i>Lagenorhynchus acutus</i>	WNA	-/-; N	48,819 (0.61; 30,403; 2011)	304	30
Atlantic spotted dolphin	<i>Stenella frontalis</i>	WNA	-/-; N	44,715 (0.43; 31,610; 2013)	316	0
Risso's dolphin	<i>Grampus griseus</i>	WNA	-/-; N	18,250 (0.5; 12,619; 2011)	126	49.7
Family Phocoenidae (porpoises): Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy ...	-/-; N	79,833 (0.32; 61,415; 2011)	706	256
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals): Gray seal	<i>Halichoerus grypus</i>	W North Atlantic	-/-; N	27,131 (0.19; 23,158)	1,389	5,688
Harbor seal	<i>Phoca vitulina</i>	W North Atlantic	-/-; N	75,834 (0.15; 66,884)	345	333

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: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/>. CV is coefficient of variation; Nmin 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.

As described below, 15 species (with 15 managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, which we have authorized. A detailed description of the of the species likely to be affected by planned HRG survey activities, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 36054; July 26, 2019); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

The effects of underwater noise from Ørsted's survey activities have the potential to result in take of marine mammals by harassment in the vicinity of the survey area. The **Federal Register** notice for the proposed IHA (84 FR 36054; July 26, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, and that information is not repeated here. No instances of serious injury or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized 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, 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 sound from HRG equipment. Based on the nature of the

activity and the anticipated effectiveness of the mitigation measures (*i.e.*, shutdown—discussed in detail below in Mitigation section), Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

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 by 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.*, 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level

B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μ Pa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Ørsted’s planned activities include the use of intermittent impulsive (HRG Equipment) sources, and therefore the 160 dB re 1 μ Pa (rms) threshold is applicable.

Level A harassment for non-explosive sources—NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (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).

These thresholds are provided in Table 2 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: <http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm>.

TABLE 2—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 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. 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.

When NMFS’ Acoustic 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 of the new thresholds, NMFS developed an optional User Spreadsheet that includes tools 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 will result in some degree of overestimate of Level A 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 mobile sources such as the HRG survey equipment planned for use in Ørsted’s activity, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the

animal in a straight line at a constant speed.

Ørsted conducted field verification tests on different types of HRG equipment within the planned Lease Areas during previous site characterization survey activities. NMFS is proposing to authorize take in these same three Lease Areas listed below.

- *OCS-A 0486 & OCS-A 0487:*

Marine Acoustics, Inc. (MAI), under contract to Oceanering International completed an underwater noise monitoring program for the field verification for equipment to be used to survey the Skipjack Windfarm Project (MAI 2018a; 2018b).

- *OCS-A 0500 Lease Area:* The Gardline Group (Gardline), under contract to Alpine Ocean Seismic Survey, Inc., completed an underwater noise monitoring program for the field verification within the Lease Area prior to the commencement of the HRG survey which took place between August 14 and October 6, 2016 (Gardline 2016a, 2016b, 2017). Additional field verifications were completed by the RPS Group, under contract to Terrasond prior to

commencement of the 2018 HRG field survey campaign (RPS 2018).

Field Verification results are shown in Table 3. The purpose of the field verification programs was to determine distances to the regulatory thresholds for injury/mortality and behavior disturbance of marine mammals that were established during the permitting process.

As part of their application, Ørsted collected field verified source levels and calculated the differential between the averaged measured field verified source levels versus manufacturers' reported source levels for each tested piece of HRG equipment. The results of the field verification studies were used to derive the variability in source levels based on the extrapolated values resulting from regression analysis. These values were used to further calibrate calculations for a specific suite of HRG equipment of similar type. Ørsted stated that the calculated differential accounts for both the site specific environmental conditions and directional beam width patterns and can be applied to similar HRG equipment within one of the specified equipment categories (e.g.

USBL & GAPS Transceivers, Shallow Sub-Bottom Profilers (SBP), Parametric SBP, Medium Penetration SBP (Sparker), and Medium Penetration SBP (Boomer)). For example, the manufacturer of the Geosource 800J medium penetration SBP reported a source level of 206 dB RMS. The field verification study measured a source level of 189 dB RMS (Gardline 2016a, 2017). Therefore, the differential between the manufacturer and field verified SL is -17 dB RMS. Ørsted planned to apply this differential (-17 dB) to other HRG equipment in the medium penetration SBP (sparker) category with an output of approximately 800 joules. Ørsted employed this methodology for all non-field verified equipment within a specific equipment category. These new differential-based proxy SLs were inserted into the User Spreadsheet and used to calculate the Level A and Level B harassment isopleths for the various hearing groups. Table 3 shows the field verified equipment SSV results as well as applicable non-verified equipment broken out by equipment category.

TABLE 3—SUMMARY OF FIELD VERIFIED HRG EQUIPMENT SSV RESULTS AND APPLICABLE HRG DEVICES GROUPED BY CATEGORY TYPE

Representative HRG survey equipment	Operating frequencies	Baseline source level (dB re 1 µPa)	Source level measured during Ørsted FV surveys (dB re 1 µPa)	2019 HRG survey data acquisition equipment
USBL & GAPS Transponder and Transceiver^a				
Sonardyne Ranger 2	19 to 34 kHz	200 dB _{RMS}	166 dB _{RMS}	Sonardyne Ranger 2 USBL HPT 5/7000; Sonardyne Ranger 2 USBL HPT 3000; Sonardyne Scout Pro; Easytrak Nexus 2 USBL; IxSea GAPS System; Kongsberg HiPAP 501/502 USBL; Edgetech BATS II.
Shallow Sub-Bottom Profilers (Chirp)^{a,c}				
GeoPulse 5430 A Sub-bottom Profiler.	1.5 to 18 kHz	214 dB _{RMS}	173 dB _{RMS}	Edgetech 3200; Teledyne Benthos Chirp III—TTV 170.
EdgeTech 512	0.5 to 12 kHz	177 dB _{RMS}	166 dB _{RMS}	PanGeo LF Chirp; PanGeo HF Chirp; EdgeTech 216; EdgeTech 424.
Parametric Sub-Bottom Profiler^d				
Innomar SES-2000 Medium 100.	85 to 115	247 dB _{RMS}	187 dB _{RMS}	Innomar SES-2000 Standard & Plus; Innomar SES-2000 Medium 70; Innomar SES-2000 Quattro; PanGeo 2i Parametric.
Medium Penetration Sub-Bottom Profiler (Sparker)^a				
Geo-Resources Geo-Source 600 J.	0.05 to 5 kHz	214 dB _{Peak} ; 205 dB _{RMS}	206 dB _{Peak} ; 183 dB _{RMS}	GeoMarine Geo-Source 400tip; Applied Acoustics Dura-Spark 400 System.
Geo-Resources Geo-Source 800 J.	0.05 to 5 kHz	215 dB _{Peak} ; 206 dB _{RMS}	212 dB _{Peak} ; 189 dB _{RMS}	GeoMarine Geo-Source 800.
Medium Penetration Sub-Bottom Profiler (Boomer)^{b,c}				
Applied Acoustics S-Boom Triple Plate Boomer (700J).	0.1 to 5	211 dB _{Peak} ; 205 dB _{RMS}	195 dB _{Peak} ; 173 dB _{RMS}	Not used for any other equipment.
Applied Acoustics S-Boom Triple Plate Boomer (1000J).	0.250 to 8 kHz	228 dB _{Peak} ; 208 dB _{RMS}	215 dB _{Peak} ; 198 dB _{RMS}	Not used for any other equipment.

^a Gardline 2016a, 2017.

^b RPS 2018.

^c MAI 2018a.

^d Subacoustech 2018.

After careful consideration, NMFS concluded that the use of differentials to derive proxy SLs is not appropriate or acceptable. NMFS determined that when field verified measurements are compared to the source levels measured in a controlled experimental setting (*i.e.*, Crocker and Fratantonio, 2016), there are significant discrepancies in isopleth distances for the same equipment that cannot be explained solely by absorption and scattering of acoustic energy. There are a number of variables, including potential differences in propagation rate, operating frequency, beam width, and pulse width that make us question whether SL differential values can be universally applied across different pieces of equipment, even if they fall within the same equipment category. Therefore, NMFS did not employ Ørsted’s planned use of

differentials to determine Level A and Level B harassment isopleths or take estimates.

As noted above, much of the HRG equipment planned for use during Ørsted’s survey has not been field-verified. NMFS employed an alternate approach in which data reported by Crocker and Fratantonio (2016) was used to establish injury and behavioral harassment zones. If Crocker and Fratantonio (2016) did not provide data on a specific piece of equipment within a given equipment category, the SLs reported in the study for measured equipment are used to represent all the other equipment within that category, regardless of whether any of the devices has been field verified. If SSV data from Crocker and Fratantonio (2016) is not available across an entire equipment category, NMFS instead adopted the

field verified results from equipment that had been tested. Here, the largest field verified SL was used to represent the entire equipment category. These values were applied to the User Spreadsheet to calculate distances for each of the planned HRG equipment categories that might result in harassment of marine mammals. Inputs to the User Spreadsheet are shown in Table 4. The source levels used in Table 4 are from field verified values shown in Table 3. However, source levels for the EdgeTech 512 (177 dB RMS) and Applied Acoustics S-Boom Triple Plate Boomer (1,000j) (203 dB RMS) were derived from Crocker and Fratantonio (2016). Table 7 depicts isopleths that could result in injury to a specific hearing group.

TABLE 4—INPUTS TO THE USER SPREADSHEET

Spreadsheet tab used	USBL	Shallow penetration SBP-chirp	Shallow penetration SBP-chirp	Parametric SBP	Medium penetration SBP—sparker	Medium penetration SBP—boomer
	D: Mobile source: Non-impulsive, intermittent	D: Mobile source: Non-impulsive, intermittent	D: Mobile source: Non-impulsive, intermittent	D: Mobile source: Non-impulsive, intermittent	F: Mobile source: Impulsive, intermittent	F: Mobile source: Impulsive, intermittent
HRG Equipment	Sonardyne Ranger 2	GeoPulse 5430 A Sub-bottom Profiler.	EdgeTech 512	Innomar SES 2000 Medium 100.	GeoMarine Geo-Source 800 J.	Applied Acoustics S-Boom Triple Plate Boomer (1,000j).
Source Level (dB RMS SPL)	166	173	177*	187	212 Pk; 189 RMS	209 Pk; 203 RMS*
Weighting Factor Adjustment (kHz) ..	26	4.5	3	42	2	0.6
Source Velocity (m/s)	2.045	2.045	2.045	2.045	2.045	2.045
Pulse Duration (seconds)	0.3	0.025	0.0022	0.001	0.055	0.0006
1/Repetition rate ^ (seconds)	1	0.1	0.50	0.025	0.5	0.333
Source Level (PK SPL) .....	.....	.....	.....	.....	212	215
Propagation (xLogR)	20	20	20	20	20	20

* Crocker and Fratantonio (2016).

TABLE 5—MAXIMUM DISTANCES TO LEVEL A HARASSMENT ISOPLETHS BASED ON DATA FROM FIELD VERIFICATION STUDIES AND CROCKER AND FRATANTONIO (2016) (WHERE AVAILABLE)

Representative HRG survey equipment	Marine mammal group	PTS onset	Lateral distance (m)
USBL/GAPS Positioning Systems			
Sonardyne Ranger 2	LF cetaceans	199 dB SEL _{cum} .....	.....
	MF cetaceans	198 dB SEL _{cum} .....	.....
	HF cetaceans	173 dB SEL _{cum}	<1
	Phocid pinnipeds	201 dB SEL _{cum} .....	.....
Shallow Sub-Bottom Profiler (Chirp)			
Edgetech 512	LF cetaceans	199 dB SEL _{cum} .....	.....
	MF cetaceans	198 dB SEL _{cum} .....	.....
	HF cetaceans	173 dB SEL _{cum} .....	.....
	Phocid pinnipeds	201 dB SEL _{cum} .....	.....
GeoPulse 5430 A Sub-bottom Profiler	LF cetaceans	199 dB SEL _{cum} .....	.....
	MF cetaceans	198 dB SEL _{cum} .....	.....
	HF cetaceans	173 dB SEL _{cum} .....	.....
	Phocid pinnipeds	201 dB SEL _{cum} .....	.....
Parametric Sub-bottom Profiler			
Innomar SES—2000 Medium 100	LF cetaceans	199 dB SEL _{cum} .....	.....
	MF cetaceans	198 dB SEL _{cum} .....	.....
	HF cetaceans	173 dB SEL _{cum}	<2
	Phocid pinnipeds	201 dB SEL _{cum} .....	.....

TABLE 5—MAXIMUM DISTANCES TO LEVEL A HARASSMENT ISOPLETHS BASED ON DATA FROM FIELD VERIFICATION STUDIES AND CROCKER AND FRATANTONIO (2016) (WHERE AVAILABLE)—Continued

Representative HRG survey equipment	Marine mammal group	PTS onset	Lateral distance (m)
Medium Penetration Sub-Bottom Profiler (Sparker)			
GeoMarine Geo-Source 800tip	LF cetaceans	219 dBpeak, 183 dB SEL _{cum}	—, <1
	MF cetaceans	230 dBpeak, 185 dB SEL _{cum}	—, —
	HF cetaceans	202 dBpeak, 155 dB SEL _{cum}	<4, <1
	Phocid pinnipeds	218 dBpeak, 185 dB SEL _{cum}	—, <1
Medium Penetration Sub-Bottom Profiler (Boomer)			
Applied Acoustics S-Boom Triple Plate Boomer (1000j)	LF cetaceans	219 dBpeak, 183 dB SEL _{cum}	—, <1
	MF cetaceans	230 dBpeak, 185 dB SEL _{cum}	—, —
	HF cetaceans	202 dBpeak, 155 dB SEL _{cum}	<3, —
	Phocid pinnipeds	218 dBpeak, 185 dB SEL _{cum}	—, —

In the absence of Crocker and Fratantonio (2016) data, as noted above, NMFS determined that field verified SLs could be used to delineate Level A harassment isopleths which can be used to represent all of the HRG equipment within that specific category. While there is some uncertainty given that the SLs associated with assorted HRG equipment are variable within a given category, all of the predicted distances based on the field-verified source level are small enough to support a prediction that Level A harassment is unlikely to occur. While it is possible that Level A harassment isopleths of non-verified equipment would be larger than those shown in Table 5, it is unlikely that such zones would be substantially greater in size such that take by Level A harassment would be expected. Therefore, NMFS is not proposing to authorize any take from Level A harassment.

The methodology described above was also applied to calculate Level B harassment isopleths as shown in Table 6. Note that the spherical spreading propagation model (20logR) was used to derive behavioral harassment isopleths for equipment measured by Crocker and Fratantonio (2016) data. However, the practical spreading model (15logR) was used to conservatively assess distances to Level B harassment thresholds for equipment not tested by Crocker and Fratantonio (2016). Table 6 shows

calculated Level B harassment isopleths for specific equipment tested by Crocker and Fratantonio (2016) which is applied to all devices within a given category. In cases where Crocker and Fratantonio (2016) collected measurement on more than one device, the largest calculated isopleth is used to represent the entire category. Table 6 also shows field-verified SLs and associated Level B harassment isopleths for equipment categories that lack relevant Crocker & Fratantonio (2016) measurements. Additionally, Table 6 also references the specific field verification studies that were used to develop the isopleths. For these categories, the largest calculated isopleth in each category was also used to represent all equipment within that category.

Further information depicting how Level B harassment isopleths were derived for each equipment category is described below:

USBL and GAPS: There are no relevant information sources or measurement data within the Crocker and Fratantonio (2016) report. However, SSV tests were conducted on the Sonardyne Ranger 2 (Gardline 2016a, 2017) and the IxSea GAPS System (MAI 2018b). Of the two devices, the IxSea GAPS System had the larger Level B harassment isopleth calculated at a distance of 6 m. It is assumed that all equipment within this category will

have the same Level B harassment isopleth.

Parametric SBP: There are no relevant data contained in Crocker and Fratantonio (2016) report for parametric SBPs. However, results from an SSV study showed a Level B harassment isopleth of 63 m for the Innomar-2000 SES Medium 100 system (Subacoustech 2018). Therefore, 63 m will serve as the Level B harassment isopleth for all parametric SBP devices.

SBP (Chirp): Crocker and Fratantonio (2016) tested two chirpers, the Edge Tech (ET) models 424 and 512. The largest calculated isopleth is 7 m associated with the Edgetech 512. This distance will be applied to all other HRD equipment within this category.

SBP (sparkers): The Applied Acoustics Dura-Spark 400 was the only sparker tested by Crocker and Fratantonio (2016). The Level B harassment isopleth calculated for this device is 141 m and represents all equipment within this category.

SBP (Boomers): The Crocker and Fratantonio report (2016) included data on the Applied Acoustics S-Boom Triple Plate Boomer (1,000j) and the Applied Acoustics S-Boom Boomer (700j). The results showed respective Level B harassment isopleths of 141 m and 178 m. Therefore, the Level B harassment isopleth for both boomers will be established at a distance of 178 m.

TABLE 6—DISTANCES TO LEVEL B HARASSMENT ISOPLETHS

HRG survey equipment	Lateral distance to level B (m)	Measured SSV level at closest point of approach single pulse SPL _{rms,90%} (dB re 1µPa ²)
USBL & GAPS Transceiver		
Sonardyne Ranger 2 ^a	2	126 to 132 @40 m.
Sonardyne Scout Pro		N/A.

TABLE 6—DISTANCES TO LEVEL B HARASSMENT ISOPLETHS—Continued

HRG survey equipment	Lateral distance to level B (m)	Measured SSV level at closest point of approach single pulse SPL _{rms,90%} (dB re 1μPa ²)
Easytrak Nexus 2 USBL .....	.....	N/A.
IxSea GAPS System ^e	6	144 @35 m.
Kongsberg HiPAP 501/502 USBL .....	.....	N/A.
Edgetech BATS II .....	.....	N/A.
Shallow Sub-Bottom Profiler (Chirp)		
Edgetech 3200 ^f	5	153 @30 m.
EdgeTech 216 ^e	2	142 @35 m.
EdgeTech 424	6	Crocker and Fratantonio (2016): SL = 176.
EdgeTech 512 ^c	2.4	141 dB @40 m. 130 dB @200 m.
Teledyne Benthos Chirp IIIITV 170	7	Crocker and Fratantonio (2016): SL = 177.
GeoPulse 5430 A Sub-Bottom Profiler ^a	4	N/A. 145 @20 m.
PanGeo LF Chirp (Corer) .....	.....	N/A.
PanGeo HF Chirp (Corer) .....	.....	N/A.
Parametric Sub-Bottom Profiler		
Innomar SES–2000 Medium 100 Parametric Sub-Bottom Profiler ^b	63	129 to 133 @100 m.
Innomar SES–2000 Medium 70 Parametric Sub-Bottom Profiler .....	.....	N/A.
Innomar SES–2000 Standard & Plus Parametric Sub-Bottom Profiler .....	.....	N/A.
Innomar SES–2000 Quattro .....	.....	N/A.
PanGeo 2i Parametric (Corer) .....	.....	N/A.
Medium Penetration Sub-Bottom Profiler (Sparker)		
GeoMarine Geo-Source 400tip .....	.....	N/A.
GeoMarine Geo-Source 600tip ^a	34	155 @20 m.
GeoMarine Geo-Source 800tip ^a	86	144 @200 m.
Applied Acoustics Dura-Spark 400 System ^g	141	Crocker and Fratantonio (2016); SL = 203.
GeoResources Sparker 800 System .....	.....	N/A.
Medium Penetration Sub-Bottom Profiler (Boomer)		
Applied Acoustics S-Boom Boomer 1000 J operation ^{d,g}	20	146 @144.
Applied Acoustics S-Boom Boomer/	141	Crocker and Fratantonio (2016); SL = 203.
700 J operation ^{d,g}	14	142 @ 38 m.
Applied Acoustics S-Boom Boomer/	178	Crocker and Fratantonio (2016); SL = 205.

Sources:

- ^a Gardline 2016a, 2017.
- ^b Subacoustech 2018.
- ^c MAI 2018a.
- ^d NCE, 2018 *e*/MAI 2018b.
- ^f Subacoustech 2017.
- ^g Crocker and Fratantonio, 2016.

For the purposes of estimated take and implementing required mitigation measure, it is assumed that all HRG equipment will operate concurrently. Therefore, NMFS conservatively utilized the largest isopleth of 178 m, derived from the Applied Acoustics S-Boom Boomer medium SBP, to establish the Level B harassment zone for all HRG categories and devices.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in

harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds by a single vessel in a single day of the survey is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel. The daily area is multiplied by the marine mammal density of a given species. This value is then multiplied by

the number of planned vessel days (666).

HRG survey equipment has the potential to cause harassment as defined by the MMPA (160 dB_{RMS} re 1 μPa). As noted previously, all noise producing survey equipment/sources are assumed to be operated concurrently by each survey vessel on every vessel day. The greatest distance to the Level B harassment threshold of 160 dB_{RMS90%} re 1 μPa level B for impulsive sources is 178 m associated with the Applied Acoustics S-Boom Boomer (700J) (Crocker & Fratantonio, 2016) under the assumption that sound emitted from the device is omnidirectional. Therefore,

this distance is conservatively used to estimate take by Level B harassment.

The estimated distance of the daily vessel trackline was determined using the estimated average speed of the

vessel and the 24-hour operational period within each of the corresponding survey segments. Estimates of incidental take by HRG survey equipment are calculated using the 178 m Level B

harassment isopleth, estimated daily vessel track of approximately 70 km, and the daily ensonified area of 25.022 km² for 24-hour operations as shown in Table 7, multiplied by 666 days.

TABLE 7—SURVEY SEGMENT DISTANCES AND LEVEL B HARASSMENT ISOPLETH AND ZONE

Survey segment	Number of active survey vessel days	Estimated distances per day (km)	Level harassment isopleth (m)	Calculated ZOI per day (km ²)
Lease Area OCS–A 0486	79	70.000	178	25.022
Lease Area OCS–A 0487	140	.....	.....	.....
Lease Area OCS–A 0500	94	.....	.....	.....
ECR Corridor(s)	353	.....	.....	.....

The data used as the basis for estimating species density for the Lease Area are derived from data provided by Duke Universities’ Marine Geospatial Ecology Lab and the Marine-life Data and Analysis Team. This data set is a compilation of the best available marine mammal data (1994–2018) and was prepared in a collaboration between Duke University, Northeast Regional Planning Body, University of Carolina, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.*, 2016a; Curtice *et al.* 2018). Recently, these data have been updated with new

modeling results and have included density estimates for pinnipeds (Roberts *et al.*, 2016b; 2017; 2018). Because the seasonality of, and habitat use by, gray seals roughly overlaps with harbor seals, the same abundance estimate is applicable. Pinniped density data (as presented in Roberts *et al.* 2016b; 2017; 2018) were used to estimate pinniped densities for the Lease Area Survey segment and ECR Corridor Survey segment(s). Density data from Roberts *et al.* (2016b; 2017; 2018) were mapped within the boundary of the survey area for each segment using geographic

information systems. For all survey area locations, the maximum densities as reported by Roberts *et al.* (2016b; 2017; 2018), were averaged over the survey duration (for spring, summer, fall and winter) for the entire HRG survey area based on the planned HRG survey schedule as depicted in Table 7. The Level B ensonified area and the projected duration of each respective survey segment was used to produce the estimated take calculations provided in Table 8.

TABLE 8—MARINE MAMMAL DENSITY AND ESTIMATED LEVEL B HARASSMENT TAKE NUMBERS AT 178 M ISOPLETH

Species	Lease area OCS–A 0500		Lease area OCS–A 0486		Lease area OCS–A 0487		ECR corridor(s)		Adjusted totals	
	Average seasonal density ^a (No./100 km ²)	Calculated take (No.)	Average seasonal density ^a (No./100 km ²)	Calculated take (No.)	Average seasonal density ^a (No./100 km ²)	Calculated take (No.)	Average seasonal density ^a (No./100 km ²)	Calculated take (No.)	Take authorization (No.)	Percent of population
North Atlantic right whale	0.502	11.798	0.383	7.570	0.379	13.262	0.759	67.029	^c 10	2.2
Humpback whale	0.290	6.814	0.271	5.354	0.277	9.717	0.402	35.537	58	6.4
Fin whale	0.350	8.221	0.210	4.157	0.283	9.929	0.339	29.905	52	3.2
Sei whale	0.014	0.327	0.005	0.106	0.009	0.306	0.011	0.946	2	0.5
Sperm whale	0.018	0.416	0.014	0.272	0.017	0.581	0.047	4.118	5	0.2
Minke whale	0.122	2.866	0.075	1.487	0.094	3.275	0.126	11.146	19	0.7
Long-finned pilot whale	1.895	44.571	0.504	9.969	1.012	35.449	1.637	144.590	235	4.2
Bottlenose dolphin	1.992	46.844	1.492	57.800	1.478	43.874	25.002	2,208.314	2,357	3.0
Short beaked common dolphin	22.499	529.176	7.943	157.012	14.546	509.559	19.198	1,695.655	2,892	4.1
Atlantic white-sided dolphin	7.349	172.857	2.006	39.656	3.366	117.896	7.634	674.282	1,005	2.1
Spotted dolphin	0.105	2.477	2.924	0.313	1.252	1.119	0.109	9.611	^d 50	0.1
Risso’s dolphin	0.037	0.859	0.016	0.120	0.032	0.498	0.037	3.291	^d 30	0.2
Harbor porpoise	5.389	126.757	5.868	115.997	4.546	159.253	20.098	1,775.180	2,177	<0.1
Harbor seal ^b	7.633	179.522	6.757	133.558	3.966	138.918	45.934	4,057.192	4,509	5.9
Gray Seal ^b	7.633	179.522	6.757	133.558	3.966	138.918	45.934	4,057.192	4,509	16.6

Notes:

^a Cetacean density values from Duke University (Roberts *et al.* 2016b, 2017, 2018).

^b Pinniped density values from Duke University (Roberts *et al.* 2016, 2017, 2018) reported as “seals” and not species-specific.

^c Exclusion zone exceeds Level B isopleth; take adjusted to 10 given duration of survey.

^d The number of authorized takes (Level B harassment only) for these species has been increased from the estimated take to mean group size. Source for Atlantic spotted dolphin group size estimate is: Jefferson *et al.* (2008). Source for Risso’s dolphin group size estimate is: Baird and Stacey (1991).

For the North Atlantic right whale, NMFS proposes to establish a 500-m EZ which substantially exceeds the distance to the level B harassment isopleth (178 m). However, Ørsted will be operating 24 hours per day for a total of 666 vessel days. Even with the implementation of mitigation measures (including night-vision goggles and thermal clip-ons) it is reasonable to assume that night time operations for an

extended period could result in a limited number of right whales being exposed to underwater sound at Level B harassment levels. Given the fact that take has been conservatively calculated based on the largest source, which will not be operating at all times, and is thereby likely over-estimated to some degree, the fact that Ørsted will implement a shutdown zone at least 1.5 times the predicted Level B threshold

distance (see below) for that largest source (and significantly more than that for the smaller sources), and the fact that night vision goggles with thermal clips will be used for nighttime operations, NMFS predicts that 10 right whales may be taken by Level B harassment.

Note that the 178-m Level B harassment isopleth associated with the Acoustics S-Boom Boomer was utilized to calculate take for the proposed IHA.

This is highly conservative as it was assumed in the proposed IHA that sound emitted by all HRG equipment is omnidirectional. However, The Applied Acoustics S-Boom Boomer actually features a defined downward focused beam width angle of 80 degrees. When this beam width is taken into consideration the Level B harassment isopleth is 64 m when the survey vessel is operating in waters with a maximum depth of 77 m. Therefore, the largest omnidirectional Level B harassment isopleth is associated with the Applied Acoustics Dura-Spark 400 System, which has a 141-m isopleth for Level B harassment. This device will be used for a maximum of 134 days out of 666 vessel days (~20 percent). We determined that the largest actual Level B harassment isopleth is more accurately estimated at a maximum of 141 m, and will be used on only 20 percent of vessel days. The next largest Level B isopleth is the GeoMarine Geo-Source 800tip which has a Level B harassment isopleth of 86 m. This device will be used for a maximum of 125 days. The remaining 273 days will utilize various HRG devices with Level B harassment isopleths ranging 63 m (Innomar SES-2000 Medium 100 Parametric Sub-Bottom Profiler) to 6 m (EdgeTech 424 sub-bottom profiler). When take is calculated by incorporating isopleths of 141 m or less, total calculated take of right whales (without consideration of mitigation) by Level B harassment is reduced from 100 to 47 takes.

Additionally, sightings of right whales have been uncommon during previous HRG surveys. Bay State Wind submitted a marine mammal monitoring report HRG survey on July 19, 2019 described PSO observations and takes in Lease Area OCS-A500, which is part of the survey area covered under this IHA as well as along several ECR corridors closer to shore. Over 376 vessel days, three separate survey ships recorded a total of 496 marine mammal detections between May 11, 2018 and March 14, 2019. NMFS acknowledges that this monitoring span excludes a portion of the higher-density period defined by NMFS for this IHA (March-June). Nevertheless, there were no confirmed observations of right whales on any of the survey ships during the entire survey period. There were a number of unidentifiable whales reported, and it is possible that some of these unidentified animals may have been right whales. However, the lack of confirmed observations indicates that right whale sightings are not common in this region. In summary, given the low observation

rate, expected efficacy of the required mitigation measures, and our revised calculated take numbers, we believe that the authorization of ten right whale takes by Level B harassment is reasonable.

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) and the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The required mitigation measures outlined in this section are based on protocols and procedures that are expected to reduce the number or intensity of takes and have been successfully and practicably

implemented in the past (DONG Energy, 2016, ESS, 2013; Dominion, 2013 and 2014). Ørsted is required to abide by the following measures, which have been modified slightly from the proposed IHA as described in the Changes section.

Ørsted will develop an environmental training program that will be provided to all vessel crew prior to the start of survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring and reporting requirements. Prior to implementation, the training program will be provided to NOAA Fisheries for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey event.

Marine Mammal Monitoring Zone, Harassment Zone and Exclusion Zone

PSOs will observe the following monitoring and exclusion zones for the presence of marine mammals:

- 500-m exclusion zone for North Atlantic right whales;
- 100-m exclusion zone for all marine mammals (except North Atlantic right whales); and

- 180-m Level B harassment zone for all marine mammals except for North Atlantic right whales. This represents the largest Level B harassment isopleth applicable to all hearing groups. Animals observed entering into the Level B harassment zone will be recorded as Level B takes.

If a marine mammal is detected approaching or entering the exclusion zones during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals.

At all times, the vessel operator will maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below. These stated requirements will be included in the site-specific training to be provided to the survey team.

Pre-Clearance of the Exclusion Zones

Ørsted will implement a 30-minute clearance period of the exclusion zones prior to the initiation of ramp-up. During this period the exclusion zones will be monitored by the PSOs, using the appropriate visual technology for a 30-minute period. Ramp up may not be initiated if any marine mammal(s) is within its respective exclusion zone. If

a marine mammal is observed within an exclusion zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes/seals, 30 minutes for all other species).

Ramp-Up

A ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or restart of HRG survey activities. A ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment use. The ramp-up procedure will not be initiated during periods of inclement conditions or if the exclusion zones cannot be adequately monitored by the PSOs, using the appropriate visual technology for a 30-minute period.

A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. When technically feasible the power would then be gradually turned up and other acoustic sources would be added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective exclusion zone. Ramp-up will continue if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes/seals and 30 minutes for all other species).

Shutdown Procedures

An immediate shut-down of the HRG survey equipment will be required if a marine mammal is sighted at or within its respective exclusion zone. The vessel operator must comply immediately with any call for shut-down by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shut-down has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone with 30 minutes of the shut-down or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes/seals and 30 minutes for all other species).

If a species for which authorization has not been granted, or, a species for which authorization has been granted

but the authorized number of takes have been met, approaches or is observed within the 180 m Level B harassment zone, shutdown must occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.*, mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up, if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones. If the acoustic source is shut down for a period longer than 30 minutes and PSOs have maintained constant observation then ramp-up procedures will be initiated as described in previous section.

The shutdown requirement is waived for small delphinids of the following genera: *Delphinus*, *Lagenorhynchus*, *Stenella*, and *Tursiops*. Specifically if a delphinid(s) from the specified genera is visually detected approaching the vessel (*i.e.*, to bow ride) or towed survey equipment, shutdown is not required. If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown. However, if delphinids from the above genera are observed within or entering the relevant EZ but do not approach the vessel or towed survey equipment, shutdown is required. Additionally, shutdown is required if a delphinid is detected in the exclusion zone and belongs to a genus other than those specified.

Vessel Strike Avoidance

Ørsted will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammal and sea turtle sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures will include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators will comply with 10 knot (<18.5 km per hour [km/h]) speed restrictions in any Dynamic Management Area (DMA) when in effect and in Mid-Atlantic Seasonal Management Areas (SMA) from November 1 through April 30;
- All vessel operators will reduce vessel speed to 10 knots or less when mother/calf pairs, pods, or larger

assemblages of non-delphinoid cetaceans are observed near an underway vessel;

- All survey vessels will maintain a separation distance of 1,640 ft (500 m) or greater from any sighted North Atlantic right whale;

- If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 1,640-ft (500-m) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 330 ft (100 m) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 330 ft (100 m). If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 330 ft (100 m);

- All vessels will maintain a separation distance of 330 ft (100 m) or greater from any sighted non-delphinoid (*i.e.*, mysticetes and sperm whales) cetaceans. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 330 ft (100 m). If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 330 ft (100 m);

- All vessels will maintain a separation distance of 164 ft (50 m) or greater from any sighted delphinid cetacean. Any vessel underway remain parallel to a sighted delphinid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinid cetaceans are observed. Vessels may not adjust course and speed until the delphinid cetaceans have moved beyond 164 ft (50 m) and/or the abeam of the underway vessel;

- All vessels underway will not divert to approach any delphinid cetacean or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted delphinid cetacean or pinniped; and

- All vessels will maintain a separation distance of 164 ft (50 m) or greater from any sighted pinniped.

Seasonal Operating Restrictions and Requirements

Ørsted will limit to three the number of surveys that will operate concurrently from March through June within the identified lease areas (OCS-A 0486, 0487, and 0500) and ECR areas north of the lease areas up to, but not including, coastal and bay waters. Ørsted plans to operate either a single vessel, two vessels concurrently or, for short periods, no more than three survey vessels concurrently in the areas described above during the March-June timeframe when right whale densities are greatest. This practice will help to reduce both the number and intensity of right whale takes.

Between watch shifts members of the monitoring team will consult NOAA Fisheries North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. Survey vessels may transit the SMA located off the coast of Rhode Island (Block Island Sound SMA) and at the entrance to New York Harbor (New York Bight SMA). The seasonal mandatory speed restriction period for this SMA is November 1 through April 30.

Throughout all survey operations, Ørsted will monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a DMA. If NOAA Fisheries should establish a DMA in the Lease Area under survey, the vessels will abide by speed restrictions in the DMA per the lease condition.

Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

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 planned 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.

Monitoring Measures

Visual monitoring of the established monitoring and exclusion zone(s) for the HRG surveys will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. During these observations, the following guidelines shall be followed:

Other than brief alerts to bridge personnel of maritime hazards and the collection of ancillary wildlife data, no additional duties may be assigned to the PSO during his/her visual observation watch. PSOs must be independent observers (i.e., not construction personnel). However, non-independent observers may be approved by NMFS, on a case-by-case basis, for limited, specific duties in support of approved, independent PSOs. On smaller vessels engaged in shallow water surveys, limited space aboard the vessel may not allow for 2 or more PSOs. In that case,

trained non-independent observers may take over if the lead PSOs needs to take a brief break (e.g. bathroom). For all HRG survey segments, an observer team comprising a minimum of four NOAA Fisheries-approved PSOs, operating in shifts, will be stationed aboard respective survey vessels. Should the ASV be utilized, at least one PSO will be stationed aboard the mother vessel to monitor the ASV exclusively. PSOs will work in shifts such that no one monitor will work more than 4 consecutive hours without a 2-hour break or longer than 12 hours during any 24-hour period. Any time that an ASV is in operation, PSOs will work in pairs. During daylight hours without ASV operations, a single PSO will be required. PSOs will rotate in shifts of 1 on and 3 off during daylight hours when an ASV is not operating and work in pairs during all nighttime operations.

The PSOs will begin observation of the monitoring and exclusion zones during all HRG survey operations. Observations of the zones will continue throughout the survey activity and/or while equipment operating below 200 kHz are in use. The PSOs will be responsible for visually monitoring and identifying marine mammals approaching or entering the established zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs will be equipped with binoculars and will have the ability to estimate distances to marine mammals located in proximity to their respective exclusion zones and monitoring zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Camera equipment capable of recording sightings and verifying species identification will be utilized. During night operations, night-vision equipment (night-vision goggles with thermal clip-ons) and infrared technology will be used. Position data will be recorded using hand-held or vessel global positioning system (GPS) units for each sighting.

Observations will take place from the highest available vantage point on all the survey vessels. General 360-degree scanning will occur during the monitoring periods, and target scanning by the PSOs will occur when alerted of a marine mammal presence.

For monitoring around the ASV, a dual thermal/HD camera will be installed on the mother vessel, facing forward, angled in a direction so as to provide a field of view ahead of the vessel and around the ASV. One PSO will be assigned to monitor the ASV exclusively at all times during both day and night when in use. During day operations the ASV will be kept in sight of the mother vessel at all times (within 800 m) and the dedicated ASV PSO will have a clear, unobstructed view of the ASV's exclusion and monitoring zones. PSOs will adjust their positions appropriately to ensure adequate coverage of the entire exclusion and monitoring zones around the respective sound sources. While conducting survey operations at night, the dedicated ASV operator will view live video feed from the dual thermal/HD camera mounted on the ASV. Images from the cameras can be captured for review and to assist in verifying species identification. In addition, night-vision goggles with thermal clip-ons, as mentioned above, and a hand-held spotlight will be provided such that PSOs can focus observations in any direction, around the mother vessel and/or the ASV.

Observers will maintain 360° coverage surrounding the mothership vessel and the ASV when in operation, which will travel ahead and slightly offset to the mothership on the survey line. PSOs will adjust their positions appropriately to ensure adequate coverage of the entire exclusion zone around the mothership and the ASV.

As part of the monitoring program, PSOs will record all sightings beyond the established monitoring and exclusion zones, as far as they can see. Data on all PSO observations will be recorded based on standard PSO collection requirements.

Reporting Measures

Ørsted will provide the following reports as necessary during survey activities:

Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified HRG and geotechnical activities lead to an unauthorized injury of a marine mammal (Level A harassment) or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Ørsted would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NOAA Greater Atlantic Regional Fisheries Office (GARFO) Stranding Coordinator. The report

would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and 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 event. NMFS would work with Ørsted to minimize reoccurrence of such an event in the future. Ørsted would not resume activities until notified by NMFS.

In the event that Ørsted discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition), Ørsted would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the GARFO Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be allowed to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Applicant to determine if modifications in the activities are appropriate.

In the event that Ørsted discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Ørsted would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the GARFO Stranding Coordinator, within 24 hours of the discovery. Ørsted would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Ørsted can continue its operations in such a case.

Within 90 days after completion of the marine site characterization survey

activities, a draft technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

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, this introductory discussion of our analyses applies to all the species listed in Table 8, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively 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,

they are described independently in the analysis below.

As discussed in the “Potential Effects of the Specified Activity on Marine Mammals and Their Habitat” section, PTS, masking, non-auditory physical effects, and vessel strike are not expected to occur.

The majority of impacts to marine mammals are expected to be short-term disruption of behavioral patterns, primarily in the form of avoidance or potential interruption of foraging. Marine mammal feeding behavior is not likely to be significantly impacted. Prey species are mobile, and are broadly distributed throughout the survey area and the footprint of the activity is small; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the availability of similar habitat and resources in the surrounding area the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Marine mammal habitat may experience limited physical impacts in the form of grab samples taken from the sea floor. This highly localized habitat impact is negligible in relation to the comparatively vast area of surrounding open ocean, and would not be expected to result in any effects to prey availability. The HRG survey equipment itself will not result in physical habitat disturbance. Avoidance of the area around the HRG survey activities by marine mammal prey species is possible. However, any avoidance by prey species would be expected to be short term and temporary.

ESA-Listed Marine Mammal Species

ESA-listed species for which takes are authorized are right, fin, sei, and sperm whales, and these effects are anticipated to be limited to lower level behavioral effects. NMFS does not anticipate that serious injury or mortality would occur to ESA-listed species, even in the absence of mitigation and no serious injury or mortality is authorized. As discussed in the *Potential Effects* section, non-auditory physical effects and vessel strike are not expected to occur. We expect that most potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences

(e.g., Southall *et al.*, 2007). The planned survey is not anticipated to affect the fitness or reproductive success of individual animals. Since impacts to individual survivorship and fecundity are unlikely, the planned survey is not expected to result in population-level effects for any ESA-listed species or alter current population trends of any ESA-listed species.

There is no designated critical habitat for any ESA-listed marine mammals within the survey area.

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. NMFS has rigorously assessed potential impacts to right whales from this survey. We have established a 500-m shutdown zone for right whales which is highly precautionary considering the Level B harassment isopleth for the largest source utilized in the specified activities for this IHA was initially estimated at 178-m for the Applied Acoustics S-Boom Boomer. However, after accounting for beam width the maximum isopleth for this equipment is actually no greater than 64 m. We determined that the largest omnidirectional Level B harassment isopleth is more accurately estimated at a maximum of 141 m, and will be used on only 20 percent of vessel days. The next largest Level B isopleth is the GeoMarine Geo-Source 800tip which has a Level B harassment isopleth of 86 m. This device will be used for a maximum of 125 days. The remaining 273 days will utilize various HRG devices with Level B harassment isopleths ranging 63 m (Innomar SES-2000 Medium 100 Parametric Sub-Bottom Profiler) to 6 m (EdgeTech 424 sub-bottom profiler). When these smaller isopleths are taken into account the calculated take decreases from 100 to 47. With these smaller zones, monitoring by PSOs is expected to be highly effective. NMFS is also requiring Orsted to limit the number of survey vessels operating concurrently to no more than three in high-density areas (Lease Areas OCS-A 0486, 0487, 0500 and ECR areas to the north up to, but not including, coastal and bay waters) during high-density periods (March-June). This will reduce both the number and intensity of right whale takes. Additionally, the absence of right whale sightings detailed in a recent marine mammal monitoring report from Lease Area OCS-A 0500 and adjacent ECR corridors suggests that right whales are not common. Given these factors, we are confident in our decision to authorize 10 takes by Level B harassment. Due to the length of the survey and continuous

night operations, it is conceivable that a limited number of right whales could enter into the Level B harassment zone without being observed. Although such an occurrence is not expected, any potential impacts to right whales would consist of, at most, low-level, short-term behavioral harassment in a limited number of animals and would have a negligible impact on the stock.

Biologically Important Areas (BIA)

The planned survey area includes a fin whale feeding BIA effective between March and October. The fin whale feeding area is sufficiently large (2,933 km²), and the acoustic footprint of the planned survey is sufficiently small that fin whale feeding opportunities would not be reduced appreciably. Any fin whales temporarily displaced from the planned survey area would be expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the biologically important feeding habitat. In addition, any displacement of fin whales from the BIA or interruption of foraging bouts would be expected to be temporary in nature. Therefore, we do not expect fin whale feeding to be negatively impacted by the planned survey.

The planned survey area includes a biologically important migratory area for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LaBrecque, *et al.*, 2015). Off the south coast of Massachusetts and Rhode Island, this biologically important migratory area extends from the coast to beyond the shelf break. The fact that the spatial acoustic footprint of the planned survey is very small relative to the spatial extent of the available migratory habitat means that right whale migration is not expected to be impacted by the planned survey. Required vessel strike avoidance measures will also decrease risk of ship strike during migration. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been authorized as HRG survey operations are required to shut down at 500 m to minimize the potential for behavioral harassment of this species.

Unusual Mortality Events (UME)

A UME is defined under the MMPA as “a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.” UMEs are ongoing and under investigation for four species relevant to HRG survey area, including humpback whales, North Atlantic right whales, minke

whales, and pinnipeds. Specific information for each ongoing UME is provided below.

As noted previously, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease. Elevated North Atlantic right whale mortalities began in June 2017, primarily in Canada. Overall, preliminary findings support human interactions, specifically vessel strikes or rope entanglements, as the cause of death for the majority of the right whales. Elevated numbers of harbor seal and gray seal mortalities were first observed in July, 2018 and have occurred across Maine, New Hampshire and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus although additional testing to identify other factors that may be involved in this UME are underway.

Direct physical interactions (ship strikes and entanglements) appear to be responsible for many of the UME humpback and right whale mortalities recorded. The planned HRG survey will require ship strike avoidance measures which would minimize the risk of ship strikes while fishing gear and in-water lines will not be employed as part of the survey. Furthermore, the planned activities are not expected to promote the transmission of infectious disease among marine mammals. The survey is not expected to result in the deaths of any marine mammals or combine with the effects of the ongoing UMEs to result in any additional impacts not analyzed here. Accordingly, Ørsted did not request, and NMFS is not proposing to authorize, take of marine mammals by serious injury, or mortality.

The required mitigation measures are expected to reduce the number and/or severity of takes by giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and preventing animals from being exposed to sound levels that have the potential to cause injury (Level A harassment) and more severe Level B harassment during HRG survey activities, even in the biologically important areas

described above. No Level A harassment is anticipated or authorized.

NMFS expects that most takes would primarily be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or decreased foraging (if such activity were occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity and with no lasting biological consequences. Since both the source and the marine mammals are mobile, only a smaller area would be ensounded by sound levels that could result in take for only a short period. Additionally, required mitigation measures would reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated;
- Any foraging interruptions are expected to be short term and unlikely to be cause significantly impacts;
- Impacts on marine mammal habitat and species that serve as prey species for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area;
- Survey activities would occur in such a comparatively small portion of the biologically important area for north Atlantic right whale migration, that any avoidance of the survey area due to activities would not affect migration. In addition, mitigation measures to shut down at 500 m to minimize potential for Level B behavioral harassment would limit take of the species, resulting in a conservative estimate of 10 takes, in the form of 10 short-term exposures, which would not be expected to affect the reproduction or survival of any individuals, much less the stock. Similarly, due to the small footprint of the survey activities in relation to the size of a biologically important area for fin whales foraging, the survey activities would not affect foraging behavior of this species; and
- Planned mitigation measures, including visual monitoring and shutdowns, are expected to minimize

the intensity of potential impacts to marine mammals.

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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Ørsted's planned HRG survey activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(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.

The numbers of marine mammals that we propose for authorization to be taken, for all species and stocks, would be considered small relative to the relevant stocks or populations (less than 17 percent for all authorized species).

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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 action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. Accordingly, NMFS

prepared an EA and analyzed the potential impacts to marine mammals that would result from the project. A FONSI was signed in May 2019. A copy of the EA and FONSI is available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Greater Atlantic Regional Field Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take fin, sei, sperm, and North Atlantic right whales which are listed under the ESA. Under section 7 of the ESA, BOEM consulted with NMFS GARFO on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of fin, sei, sperm, and North Atlantic right whales. Upon request from the NMFS Office of Protected Resources, the NMFS GARFO will issue an amended incidental take statement associated with this Biological Opinion to include the takes of the ESA-listed whale species authorized through this IHA.

Authorization

NMFS has issued an IHA to Ørsted for HRG survey activities effective one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 26, 2019.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019-21458 Filed 10-1-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of the Record of Decision for Department of the Navy Real Estate Actions in Support of the Boardman to Hemmingway Transmission Line Project, at Naval Weapons Systems Training Facility Boardman, OR

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The United States (U.S.) Department of the Navy (DoN), after participating as a cooperating agency in the development and evaluation of the U.S. Bureau of Land Management's Final Environmental Impact Statement (EIS) for the Boardman to Hemmingway Transmission Line Project (B2H Project), and carefully weighing the strategic, operational, and environmental consequences of the proposed action, announces its decision to adopt the Final EIS and implement real estate actions as set out in the selected alternative, identified as the Agency Preferred Alternative in the Final EIS dated November 2016.

SUPPLEMENTARY INFORMATION: DoN real estate actions would grant a 7.1 mile by 90-foot right of way easement to the Idaho Power Company to allow for construction and operation of a portion of the B2H project on Naval Weapons Systems Training Facility (NWSTF) Boardman, Oregon in exchange for the termination of an existing land use agreement and removal of transmission infrastructure held by Bonneville Power Administration (BPA) that occupies the same right-of-way.

The Agency Preferred Alternative route exits the proposed Longhorn Substation to the south, crossing the boundary of NWSTF Boardman at the northeastern corner and parallels the eastern boundary of NWSTF Boardman along the west side of Bombing Range Road for approximately 7.1 miles. At that point, the route crosses over Bombing Range Road to the east and exits Federal property. The route will avoid the Resource Natural Area B, a Washington ground squirrel Resource Management Area, and traditional cultural properties on NWSTF Boardman.

The complete text of the Record of Decision (ROD) for the DoN's real estate action is available at: <https://navfac.navy.mil/NWNEPA>, along with the November 2016 Final EIS for the Boardman to Hemmingway Transmission Line Project. Single copies of the ROD are available upon request by

contacting: Naval Facilities Engineering Command Northwest, Attn: Jackie Queen (Environmental Planner), 3730 Charles Porter Avenue, Oak Harbor, WA 98278-5000.

Approved: September 26, 2019.

D.J. Antenucci,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019-21341 Filed 10-1-19; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI)

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), U.S. Department of Education.

ACTION: Request for student nominees for appointment to serve on the National Advisory Committee on Institutional Quality and Integrity (NACIQI).

SUMMARY: Per the United States Code at least one member of the NACIQI must be a student who, at the time of the appointment by the Secretary of Education, is attending an institution of higher education.

DATES: Nominations must be received no later than Friday, October 25, 2019.

ADDRESSES: You may submit nomination(s), including attachments via email to: cmtmgntoffice@ed.gov (specify in the email subject line "NACIQI Student Nomination"). For questions, please contact the U. S. Department of Education, Committee Management Office at (202) 401-3677.

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA, and is composed of 18 members appointed—

(A) On the basis of the individuals' experience, integrity, impartiality, and good judgment;

(B) From among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, representing all sectors and types of institutions of higher education; and

(C) On the basis of the individuals' technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration of higher education. Per 20 U.S.C. 1011d at least one member of the NACIQI must be a student who, at the time of the appointment by the Secretary of Education, is attending an institution of higher education. The

NACIQI meets at least twice a year and advises the Secretary with respect to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.

- The recognition of specific accrediting agencies or associations.

- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

- The eligibility and certification process for institutions of higher education under Title IV of the HEA, together with recommendations for improvements in such process.

- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.

- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe by regulation.

Nomination Process: Interested persons or organizations may nominate a qualified student(s). To nominate a student(s) or self-nominate for appointment to the NACIQI, please submit the following information to the U.S. Department of Education.

- A cover letter addressed to the Secretary as follows: Honorable Betsy DeVos, Secretary of Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. In the letter, please state your reason(s) for the nomination;

- A copy of the nominee's current resume

- Contact information for the nominee (name, address, contact phone number, and email address)

In addition, the cover letter must include a statement affirming the nominee (if you are nominating someone other than yourself) has agreed to be nominated and is willing to serve on the NACIQI if appointed by the Secretary of Education. Nominees should be broadly knowledgeable about higher education and accreditation.

Electronic Access to this Document: The official version of this document is published in the **Federal Register**. Free internet access to the official version of this notice in the **Federal Register** and the applicable Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys.

At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is

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

Diane Auer Jones,

Principal Deputy Under Secretary Delegated to Perform the Duties of the Under Secretary, U.S. Department of Education.

[FR Doc. 2019-21436 Filed 10-1-19; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee; Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act requires notice of the meeting be announced in the **Federal Register**.

DATES:

Monday, November 4; 1:00 p.m.–5:30 p.m.

Tuesday, November 5; 8:30 a.m.–12:30 p.m.

ADDRESSES: Hyatt Regency Hotel, 200 S Pine Ave., Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT:

Email: HTAC@nrel.gov or at the mailing address: Shawna McQueen, Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE-3F, Washington, DC 20585, telephone: (202) 586-0833.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law No. 109-58; 119 Stat. 849, to provide advice and recommendations to the Secretary of Energy on the program authorized by Title VIII of EPACT.

Tentative Agenda: (updates will be posted on the web at): http://hydrogen.energy.gov/advisory_htac.html.

- HTAC Business (including public comment period)
- DOE Leadership Updates

- Program and Budget Updates
- Updates from Federal/State Governments and Industry
- HTAC Subcommittee Updates
- HTAC Discussion Period

Public Participation: The meeting is open to the public. Individuals who would like to attend and/or to make oral statements during the public comment period must register no later than 5:00 p.m. on Friday, October 25, 2019, by email at: HTAC@nrel.gov. Entry to the meeting room will be restricted to those who have confirmed their attendance in advance. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Those wishing to make a public comment are required to register. The public comment period will take place sometime between 1:00 p.m. and 2:00 p.m. on November 4, 2019. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to HTAC@nrel.gov.

Minutes: The minutes of the meeting will be available for public review at http://hydrogen.energy.gov/advisory_htac.html.

Signed in Washington, DC, on September 26, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019-21372 Filed 10-1-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Case Number CAC-050]

Energy Conservation Program: Decision and Order Granting a Waiver to Johnson Controls, Inc. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of decision and order.

SUMMARY: The U.S. Department of Energy (“DOE”) gives notice of a Decision and Order granting Johnson Controls, Inc. (“JCI”) a waiver from specified portions of the DOE test procedure for determining the efficiency of specified central air conditioners (“CAC”) and heat pump (“HP”) basic models. JCI is required to test and rate specified basic models of its central air

conditioners and heat pumps in accordance with the alternate test procedure specified in the Decision and Order.

DATES: The Decision and Order is effective on October 2, 2019. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for central air conditioners and heat pumps located at 10 CFR part 430, subpart B, appendix M that addresses the issues presented in this waiver. At such time, JCI must use the relevant test procedure for this product for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585-0103. Telephone: (202) 586-9496. Email: Peter.Cochran@hq.doe.gov.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants JCI a waiver from the applicable test procedure at 10 CFR part 430, subpart B, appendix M for specified basic models of central air conditioners and heat pumps, provided that JCI tests and rates such products using the alternate test procedure specified in the Decision and Order. JCI's representations concerning the energy efficiency of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c)).

Consistent with 10 CFR 430.27(j), not later than December 2, 2019, any manufacturer currently distributing in commerce in the United States products employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such products in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of those products in the United States. Manufacturers may also submit a

request for interim waiver pursuant to the requirements of 10 CFR 430.27.

Signed in Washington, DC, on September 27, 2019.

Alexander Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency.

Case Number CAC-050 Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act of 1975, as amended ("EPCA"),¹ among other things, authorizes the U.S. Department of Energy ("DOE") to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291-6317) Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include central air conditioners (CACs) and heat pumps (HPs), the focus of this document. (42 U.S.C. 6292(a)(3))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered

products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for central air conditioners and heat pumps is contained in the Code of Federal Regulations ("CFR") at 10 CFR part 430, subpart B, appendix M, *Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps* ("Appendix M").

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

II. Petition for Waiver

A. JCI's Assertions

On April 6, 2017, JCI filed a petition for waiver and an application for interim waiver from certain testing requirements of Appendix M. Subsequently, JCI filed an amended petition for waiver and application for interim waiver on June 5, 2018. The amended petition serves as the basis for this Decision and Order. On August 13, 2018, DOE published a notice announcing its receipt of the petition for waiver, granting JCI an interim waiver, and requesting public comment on the waiver ("Notice of Petition for Waiver"). 83 FR 40011.

According to JCI, the basic models listed in its petition, which use R-407C as the refrigerant, are offered as new, matched systems and testing them as outdoor units with no match (as required by the DOE test procedure) will overstate their energy usage, resulting in materially inaccurate comparative data. JCI states that it has certified more than 1,100 unique CAC combinations that use R-407C as a refrigerant. The certified ratings range from 14 to 16

¹ All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115-270 (October 23, 2018).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

SEER (Seasonal Energy Efficiency Ratio) when tested as new, matched systems, but would fall below the minimum standard of 13 SEER in 10 CFR 430.32(c) if tested as outdoor units with no match. Further, JCI contends that many CAC components, including outdoor units, regardless of refrigerant type, are also used to replace failed components of previously installed systems. For example, an outdoor unit that uses R-410A as a refrigerant can be used to replace a failed outdoor unit in a previously installed system. But, as

opposed to one of the R-407C outdoor units listed in JCI's petition, the R-410A outdoor unit is rated based on testing as a new, matched system; it is not rated based on an approximation of its efficiency performance when matched with older, less-efficient indoor units. As a result, in addition to providing materially inaccurate data regarding energy usage when installed as new, matched systems, JCI also contends that the outdoor unit with no match test procedure provisions provide materially inaccurate data in outdoor unit only

replacement scenarios when comparing the performance of R-407C outdoor units and outdoor units that use other refrigerants, such as R-410A. (JCI, No. 7, pp. 4-5) ³

B. Comments Received in Response to the Notice of Petition for Waiver

In response to the Notice of Petition for Waiver, DOE received substantive comments ⁴ from the nine stakeholders listed in the table below:

TABLE OF COMMENTERS

Commenter(s)	Affiliation	Identifier
Appliance Standards Awareness Project	Advocacy Group	ASAP.
California Energy Commission	State	CEC.
California Investor-Owned Utilities	Utilities	CA-IOUTs.
Carrier Corporation	Manufacturer	Carrier.
Goodman Global, Inc.	Manufacturer	Goodman.
Lennox International Inc.	Manufacturer	Lennox.
Natural Resources Defense Council	Advocacy Group	NRDC.
Nortek Global HVAC	Manufacturer	Nortek.
Rheem Manufacturing Company	Manufacturer	Rheem.

All of the commenters, with the exception of Rheem,⁵ oppose JCI's petition for waiver. In general, commenters state that the basic models listed in JCI's petition are primarily installed as replacement outdoor units, and not as new, matched systems. For example, Goodman states that "JCI's R407C equipment is predominantly distributed, sold and installed as an outdoor-only unit replacement for an existing R22 system, and in such circumstances it is matched with an existing smaller R22 indoor coil. JCI's R407C outdoor units are *not* typically distributed, sold and installed as part of a matched R407C system (that is, matched with a new R407C indoor coil) because contractors are highly unlikely to install the much larger R407C indoor coils." (Goodman, No. 30, p. 2) (emphasis in original) Similarly, ASAP states that "JCI's R-407C products are marketed and sold to replace outdoor units on legacy systems that use R-22 refrigerant," and are "rarely, if ever, installed" as new, matched systems. (ASAP, No. 27, pp. 1-2)

As a result, these commenters believe that the current test procedure, which requires the basic models listed in the petition to be tested as outdoor units with no match, measures the energy

efficiency of these models during a representative average use cycle. Thus, if the petition is granted, consumers and other entities, such as utilities, will not be able to rely on JCI's certified efficiency ratings when making decisions based on the energy consumption of the basic models. For instance, Lennox states that "JCI provided no evidence that 407C condensers are predominantly installed in consumers' homes matched with 407C coils. Therefore, DOE's applying the No Match Requirements to JCI's 407C condensers will yield representative test results of average consumer use, as required by statute." (Lennox, No. 26, p. 9) The CA-IOUTs state that "[s]hould this waiver be granted, it will not be possible to know the energy usage of JCI's affected units when paired with existing installed indoor coils." (CA-IOUTs, No. 25, p. 2)

Some commenters also state that granting the waiver would have the effect of lowering the energy conservation standard for the basic models listed in JCI's petition. For example, ASAP states that "[g]ranted this waiver would be tantamount to a lowering of the standard for products that use a particular refrigerant" and

would "circumvent the anti-backsliding clause" of EPCA. (ASAP, No. 27, p. 2)

C. DOE's Determination

As discussed above, JCI asserts that the basic models listed in the petition, which use R-407C as the refrigerant, are installed as both replacement outdoor units in existing installations and as new, matched systems. As such, testing JCI's R-407C units under the outdoor unit with no match provisions results in materially inaccurate comparative data for both outdoor unit only replacement installations and new, matched system installations. In order to evaluate JCI's claim that these basic models are installed as both replacement outdoor units and as new, matched systems, DOE reviewed JCI's public-facing materials, including marketing materials and technical guides for the basic models listed in the petition, comments received in response to the Notice of Petition for Waiver, and other information submitted by JCI.⁶ These materials support JCI's assertion that these models are offered as both replacement outdoor units in existing installations and as new, matched systems. Further, while JCI states that it principally sells these basic models through independent distributors and

³ DOE will cite to information in the waiver petition docket as follows: (Commenter name, comment docket ID number, page of that document). The docket is available at <https://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0039>.

⁴ DOE received one comment that simply stated "I object to the waiver," and three other comments that did not discuss the waiver at all.

⁵ Rheem submitted a comment to clarify that it has not certified any product that uses R-407C as

a refrigerant since the latest revision to the test procedure in 2017.

⁶ These materials are all available in the docket at <https://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0039>.

has limited information about how these models are installed in the field, warranty registrations for these models indicate some consumers are installing these products as matched systems. (JCI, No. 33, p. 6) Additionally, while commenters claim that these models are “highly unlikely” to be or “rarely, if ever,” installed as new, matched systems, they do not claim, or provide evidence, that these systems are never installed as new, matched systems. As a result, DOE has determined that the basic models listed in JCI’s petition are installed as replacement outdoor units with existing indoor units and as new, matched systems.

Under 10 CFR 430.27(f)(2), DOE will grant a waiver for one of two reasons: (1) The basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures; or (2) the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. JCI asserts that application of the outdoor unit with no match testing provisions in Appendix M to the basic models listed in its petition would evaluate these models in a manner so unrepresentative of their true energy consumption characteristics as to provide material inaccurate comparative data. To illustrate its claim of materially inaccurate comparative data, JCI refers to the difference in how energy consumption is determined under DOE’s current test procedure between the basic models listed in the petition, which use R-407C as a refrigerant, and other CAC and HP systems that use R-410A as the refrigerant. Under DOE’s current test procedure, the energy efficiency rating of an R-407C unit is calculated as an outdoor unit with no match, regardless of whether it may actually be installed as a new, matched system, while the energy efficiency rating of an R-410A unit is calculated as a new, matched system, regardless of whether it may actually be installed as an outdoor unit only replacement. There is a significant difference in calculated energy efficiency between these two approaches. JCI states that the certified ratings for its R-407C units range from 14 to 16 SEER when tested as new, matched systems, but would fall below the minimum standard of 13 SEER if tested as outdoor units with no match.

DOE acknowledged this disparate treatment in response to a comment submitted by JCI during the last test procedure rulemaking. “[I]t has always been the case that some outdoor units are installed as replacements for failed

outdoor units. However, in most cases an outdoor unit model would also be sold in substantial numbers as a combination with indoor units. This is in contrast to R-407C units, which are predominantly sold in scenarios in which the outdoor unit is replaced, and the indoor unit is not replaced. Hence the test procedure is representative of an average use cycle for R-410A units without requiring that it be tested as a unit with no match.” 82 FR 1426, 1434 (Jan. 5, 2017).

Having reexamined this issue in light of JCI’s petition for waiver, DOE has determined that such disparate treatment between systems that use R-407C as a refrigerant and systems that use other refrigerants, such as R-410A, is unwarranted and results in materially inaccurate comparative data. Testing R-407C units differently from other units prevents consumers from making apples-to-apples comparisons about energy consumption and operating costs. Consumers cannot make informed decisions when, unbeknownst to them, they may be comparing the cost and performance of CAC and HP systems based on different installation scenarios. Furthermore, even if it is assumed that a representative average use cycle for CACs and HPs should account for outdoor unit only replacement scenarios, there is no reason to exclude certain outdoor units from such treatment simply because these units are also sold in “substantial” numbers as new, matched systems. Being sold in “substantial” numbers as new, matched systems does not preclude these units from also being sold in significant numbers as replacements for failed outdoor units. In fact, according to information provided by the Air-conditioning, Heating and Refrigeration Institute (AHRI) during the last energy conservation standards rulemaking for CACs and HPs, approximately 25 percent of all replacement installations, regardless of refrigerant used, are outdoor unit only replacements. 82 FR 1786, 1815 (Jan. 6, 2017). This percentage was significant enough for DOE to adjust its energy use analysis in the energy conservation standards rulemaking to account for the increased energy consumption of outdoor unit only replacement installations. *Id.* Thus, DOE has determined that accounting for outdoor unit only replacement installations in the average use cycle for CAC and HP systems that use R-407C, but not in systems that are sold in “substantial” numbers as new, matched systems is inconsistent and results in materially inaccurate comparative data.

Finally, with respect to ASAP’s comment that granting JCI’s waiver

request would circumvent the anti-backsliding provision in EPCA, DOE notes that the anti-backsliding provision prohibits DOE from issuing any amended standards that would increase the maximum allowable energy use or decrease the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Even if it is assumed that this provision applies to test procedure waivers, ASAP’s argument that granting JCI’s waiver request would result in backsliding is disingenuous. Under 42 U.S.C. 6293(e), if an amended test procedure alters the measured energy efficiency of a covered product, DOE is required to make a corresponding adjustment to the energy conservation standard to ensure that a previously compliant covered product would remain compliant and a previously non-compliant covered product would remain non-compliant. When DOE issued the current test procedure for CACs and HPs on January 5, 2017, DOE made a determination that the amended test procedure provisions from which JCI is seeking a waiver would not alter the measured energy efficiency of these covered products, and, as a result, did not adjust the energy conservation standard for CACs and HPs. 82 FR 1426, 1428. If this determination was correct, granting JCI’s petition for waiver would have no effect on the measured energy efficiency of the basic models listed in the petition and, therefore, backsliding of the standard would not be possible. As a result, ASAP’s argument is that DOE’s determination in the test procedure rulemaking was incorrect and these test procedure provisions do alter the measured energy efficiency of the basic models listed in JCI’s petition. This argument, concerning the difference in measured energy efficiency between DOE’s prior and current test procedures, has no bearing on whether the current test procedure evaluates the basic models listed in the petition in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data.

For the reasons explained here and in the Notice of Petition for Waiver, DOE understands that absent a waiver, the basic models identified by JCI in its petition will be evaluated in a manner so unrepresentative of their true energy consumption characteristics when installed as new, matched systems as to provide materially inaccurate comparative data. DOE has reviewed the alternate test procedure suggested by JCI and concludes that it is representative of the energy consumption of these basic

models when installed as new, matched systems, and will allow for accurate comparisons of energy use between CAC and HP systems that use different refrigerants. Thus, DOE grants JCI's petition for waiver and requires that JCI test and rate the CAC and HP basic models listed in its petition according to the alternate test procedure specified in the Decision and Order, which is identical to the alternate test procedure provided in the interim waiver.

This Decision and Order is applicable only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner.

JCI may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 430.27(g). JCI may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 430.27(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, JCI may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

DOE recognizes that commenters have raised valid concerns about the need to provide information regarding the energy consumption of CACs and HPs when a new outdoor unit is paired with an existing, older indoor unit. DOE is mindful that consumers need accurate comparative data in order to make informed purchasing decisions. Under DOE's waiver regulations, DOE is required to revise the CAC and HP test procedure so as to eliminate the need for this waiver. 10 CFR 430.27(l). During this process, DOE will explore all options within its statutory authority to provide energy consumption information to consumers that accounts for these replacement scenarios for all CAC and HP systems in the market, regardless of refrigerant.

III. Consultations With Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission ("FTC") staff concerning JCI's petition for waiver.

IV. Order

After careful consideration of all the material that was submitted by JCI for the models identified in the petition and the comments received, in this matter, it is ordered that:

(1) JCI must, as of the date of publication of this Order in the **Federal Register**, test and rate the CAC and HP basic models listed in paragraph (A) with the alternate test procedure set forth in paragraph (2):

(A) GAW14L18C2*S, GAW14L24C2*S, GAW14L30C2*S, GAW14L36C2*S, GAW14L42C2*S, GAW14L48C2*S, GAW14L60C2*S

(2) The applicable method of test for the JCI basic models listed in paragraph (1)(A) is the test procedure for CACs and HPs prescribed by DOE at 10 CFR part 430, subpart B, appendix M, except that 10 CFR 429.16(a)(3)(i) shall be as detailed below. All other requirements of 10 CFR 429.16 remain applicable.

In § 429.16(a), *Determination of Represented Value*:

(3) *Refrigerants*. (i) If a model of outdoor unit (used in a single-split, multi-split, multi-circuit, multi-head mini-split, and/or outdoor unit with no match system) is distributed in commerce and approved for use with multiple refrigerants, a manufacturer must determine all represented values for that model using each refrigerant that can be used in an individual combination of the basic model (including outdoor units with no match or "tested combinations"). This requirement may apply across the listed categories in the table in paragraph (a)(1) of this section. A refrigerant is considered approved for use if it is listed on the nameplate of the outdoor unit. If any of the refrigerants approved for use is HCFC-22 or if there are no refrigerants designated as approved for use, a manufacturer must determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, P_{w,OFF}, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match. If a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture (unless either (a) the factory charge is equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F or (b) an A2L refrigerant is approved for use and listed in the certification report), a

manufacturer must determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, P_{w,OFF}, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match.

(3) *Representations*. JCI may not make representations about the efficiency of the basic models identified in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27.

(5) This waiver is issued on the condition that the statements, representations, and documentation provided by JCI are valid. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, JCI may request that DOE rescind or modify the waiver if JCI discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Granting of this waiver does not release JCI from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on September 27, 2019.

Alexander Fitzsimmons

Acting Deputy Assistant Secretary For Energy Efficiency.

[FR Doc. 2019-21437 Filed 10-1-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Tuesday, October 29, 2019, 8:30 a.m.–5:15 p.m.
 Wednesday, October 30, 2019, 9:00 a.m.–12:00 p.m.

ADDRESSES: Sun Valley Inn, 2 Sun Valley Road, Sun Valley, Idaho 83353.

FOR FURTHER INFORMATION CONTACT: David Borak, EM SSAB Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; Phone: (202) 586–9928, or email: david.borak@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics

Tuesday, October 29, 2019

- EM Program Update
- EM SSAB Chairs' Round Robin
- EM Budget Update
- Transportation in Environmental Cleanup
- Working with DOE on Transportation Planning
- Public Comment
- Board Business

Wednesday, October 30, 2019

- DOE Headquarters News and Views
- Field Operations/Waste Disposition Update
- Public Comment
- Board Business

Public Participation: The meeting is open to the public. The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following website: <https://energy.gov/em/listings/chairs-meetings>.

Signed in Washington, DC, on September 26, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–21366 Filed 10–1–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2019–2 of the Defense Nuclear Facilities Safety Board, Safety of the Savannah River Site Tritium Facilities

AGENCY: Office of Environment, Health, Safety and Security, Department of Energy.

ACTION: Notice.

SUMMARY: On June 11, 2019, the Defense Nuclear Facilities Safety Board issued Recommendation 2019–2, *Safety of the Savannah River Site Tritium Facilities*, to the Department of Energy. In accordance with the Atomic Energy Act of 1954, the Secretary of Energy's response to the Recommendation is provided in this notice.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before November 1, 2019.

ADDRESSES: Please send to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Chaves, Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or telephone number (301) 903–5999, or email Christopher.Chaves@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On June 11, 2019, the Defense Nuclear Facilities Safety Board issued Recommendation 2019–2, *Safety of the Savannah River Site Tritium Facilities*, to the Department of Energy. Recommendation 2019–2 was published in the **Federal Register** on June 19, 2019 (84 FR 28517). In accordance with section 315(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2286d(c)), the Secretary of Energy's response to the Recommendation is printed in full at the conclusion of this notice.

Signed in Washington, DC on September 24, 2019.

Joe Olencz,

Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Environment, Health, Safety and Security.

September 10, 2019

The Honorable Bruce Hamilton
 Defense Nuclear Facilities Safety Board

625 Indiana Avenue NW, Suite 700
 Washington, DC 20004

Dear Mr. Chairman:

I appreciate the Defense Nuclear Facilities Safety Board's (DNFSB) continued support to the Department of Energy's National Nuclear Security Administration (DOE/NNSA) in the safe operation of our facilities. I am committed to ensuring DOE/NNSA continues to remain fully compliant in the safe operations of our defense nuclear facilities in a manner that provides adequate protection to the public, our workforce, and the environment. Secretary Perry has requested that I respond to DNFSB Recommendation 2019–2, *Safety of the Savannah River Site Tritium Facilities*, dated June 11, 2019. In responding, I first want to assure you that DOE/NNSA remains fully compliant and committed in our duties to the American public in the safe operation of these facilities as outlined in the enclosure to this letter. These actions address the concerns of the DNFSB and reflect how DOE/NNSA is providing adequate protection of the public's health and safety at the Tritium Facilities at the Savannah River Site (SRS). Therefore, I do not accept Recommendation 2019–2.

DOE/NNSA's safety programs and policies, and their effective implementation by our well-trained workforce, provide reasonable assurance that adequate protection of public health and safety is provided. Focused ongoing actions at the Tritium Facilities at SRS adequately address DNFSB concerns outlined in Recommendation 2019–2 and make the need for additional actions in response to a DNFSB Recommendation unnecessarily duplicative of that effort, and would, therefore, detract from our continued progress. Our commitment to safety in the Tritium Facilities remains unwavering, and there has been no change in the conservative safety philosophy in the operation of the Tritium Facilities.

The Department believes that the current Tritium Facilities' documented safety analysis contains appropriate safety significant controls and the new analysis, which is nearing completion, will strengthen that safety posture. The

planned Tritium Finishing Facility (TFF), included in the President's FY 2020 Budget Request, will fundamentally improve safety at SRS, as DOE/NNSA moves from the aging H-Area Old Manufacturing Facility to this new seismically-qualified facility. Furthermore, the SRS Emergency Management Program has demonstrated steady and significant improvement over the past several years and continues to provide adequate protection to the workforce and the public surrounding SRS. A comprehensive explanation of our safety improvement activities is detailed in the enclosure.

DOE/NNSA would be willing to brief DNFSB on our actions outlined in the enclosure and keep the Board updated over time. We appreciate the Board's perspectives and look forward to the continued positive interactions with you and your staff.

If you have any questions, please contact Ms. Nicole Nelson-Jean, Manager of the Savannah River Field Office, at (803) 208-3689.

Sincerely,

Lisa E. Gordon-Hagerty

Enclosure

Enclosure

Department of Energy (DOE) Secretary Response to the June 11, 2019, DNFSB Recommendation 2019-2, *Safety of the Savannah River Site Tritium Facilities*

Sub-recommendation 1—Identify and implement near-term compensatory measures at SRS to mitigate the potential for high radiological consequences to individuals who would be impacted by a release from the Tritium Facilities.

Procedural reductions in the Material At Risk (MAR) have been completed in the Tritium Facilities. Each operating facility that makes up the Tritium Facilities has an associated MAR listed in the Documented Safety Analysis (DSA). When it was understood that the new analysis would increase the dose consequences, Savannah River Nuclear Solutions (SRNS) reduced tritium quantities in such facility through the Automated Reservoir Management System. These reductions are reflected in the DSA currently advancing through the approval process by the Department's approval process.

Over the past several years, the Department of Energy's National Nuclear Security Administration (DOE/NNSA) and the Savannah River Site (SRS) Management and Operating partner, SRNS, have taken actions to continue improving the Tritium Facilities safety posture. A new hazards

analysis has been conducted along with a revision to the DSA. This new analysis has further emphasized identifying engineered controls over administrative controls. The Board's technical staff was recently provided a draft of the new DSA. The Department notes that even with the extreme conservatism in the analytical parameters, including a postulated simultaneous release of all tritium, from all the multiple facilities within 20 minutes; the postulated consequences to the public remain below the Evaluation Guideline of DOE-STD-3009-94, *Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses*.

In addition, hypothetical, worst-case modeling does not account for any Emergency Response exposure reduction actions, personnel self-protection actions, nor any subsequent response actions to mitigate the potential consequences. Based on the current DSA, and the new DSA in review, reasonable assurance of adequate protection is ensured and the risk to the public remains very low. It is anticipated that the new DSA will be approved in 2019. The actions taken in completing the DSA aligns with addressing the concerns raised in Recommendation 2019-2.

DOE/NNSA actions and plans that would have responded to this Sub-recommendation are complete or underway and therefore are considered to have met the objectives of this Sub-recommendation. DOE/NNSA is willing to brief the DNFSB on these actions on a recurring basis.

Sub-recommendation 2—Identify and implement long-term actions and controls to prevent or mitigate the hazards and pose significant radiological consequences to acceptably low values consistent with the requirements of DOE directives.

As noted in the Recommendation, DOE/NNSA committed in 2011 to develop a new analytical model for dose consequences for SRS. In 2011, DOE/NNSA outlined a plan to update the atmospheric dispersion model, which was completed in 2014. Implementation of that new analysis began shortly thereafter and included a review of the safety controls selection and hierarchy. DOE/NNSA decided to combine all the Tritium Facilities' safety bases and to conduct a holistic revision to the DSA. The new analysis placed additional emphasis on engineered controls over administrative controls. After an extensive review, DOE/NNSA directed changes and updates to the draft DSA, including development of a formal strategy that will continue to strengthen

the controls to protect co-located workers (CWs) from large energetic events postulated by the safety analysis. The revised DSA was delivered to DOE/NNSA in November 2018. Subject matter experts from across DOE/NNSA have completed a review of the resubmitted DSA and have generated a number of additional items requiring further action. The actions taken in completing the DSA aligns with addressing the concerns raised in Recommendation 2019-2.

The new DSA includes a number of new credited features, including the 217-H Vault walls and fire damper, new Specific Administrative Controls (SACs) for fire water tank, and other new Fire Suppression Surveillances have been added. In addition, all current Programmatic Controls have been replaced by at least one SAC.

In 2018, recognizing the desire to reduce worker consequences, DOE/NNSA requested and received from SRNS a strategy for risk reduction to CWs (U-ESR-H-00163, Rev.0). This strategy describes the SRNS plans for additional structural analyses and control development, if required for the remaining facilities during a potential seismic event. This analysis will be used to determine suitability for upgrading the functional classification of additional controls. It also includes analysis for dose reduction (e.g. tritium oxidation conversion rates, plume rise phenomena, etc.). In the aggregate, the plan includes 19 commitments that are being pursued and managed (SRNS-T0000-2018-00227, *Transmittal of the Schedule for Implementing the Strategy for Risk Reduction to the Co-Located Worker in Tritium Facilities*).

Longer term plans include the construction of the Tritium Finishing Facility (TFF) capital line item project, to replace the aging HAOM 234-H facility with a seismically-qualified facility with a dedicated fire suppression system. The TFF project will mitigate potential risks to DOE/NNSA's Stockpile Stewardship Program stemming from housing operations in outdated facilities.

A formal Analysis of Alternatives (AoA) was performed and documented for the TFF project. The results of the AoA recommended the construction of new buildings instead of upgrading existing buildings that involve tritium operations. This will promulgate safety in design integration and the new TFF facilities will meet current DOE requirements. It is anticipated the TFF project will meet the Critical Decision-1 project milestone in early FY 2020. The current confinement strategy for TFF is based on the use of multiple

physical barriers and active controls to include:

- Robust containers storing the MAR.
- Robust Natural Phenomena Hazard

Design Category-3 (NDC-3) structures preventing building collapse and impacts to containers.

- Robust NDC-3 fire suppression systems preventing the spread of a fire and mitigating the consequences of a release.

- Exhaust Ventilation with elevated release to mitigate consequences to the CWs. Based on application of passive barriers and active controls, the mitigated consequence to both the public and CW from a release of radiological materials is either prevented or maintained at levels well below the Evaluation Guidelines.

As described above, DOE/NNSA is committed to improving the safety posture of the Tritium Facilities. The actions already taken and those in progress meet the requirements of our Directives. No additional actions are required at this time.

DOE/NNSA actions and plans that would have responded to this Sub-recommendation are complete or underway and therefore are considered to have met the issues highlighted and meet the intent of the recommendation. DOE/NNSA would be willing to brief the DNFSB on these actions on a recurring basis.

Sub-recommendation 3—Evaluate the adequacy of the following safety management programs and upgrade them as necessary to ensure that SRS can effectively respond to energetic accidents at the Tritium Facilities, and that it can quickly identify and properly treat potential victims.

Sub-Recommendation #3 discusses the Site's capability to respond to a Tritium event. The SRS and Tritium Facilities Emergency Management programs have made significant improvements over the past several years. The Emergency Preparedness (EP) program meets DOE Directives and is adequate to continue protecting the SRS workers and the surrounding public. We have recently evaluated the SRS safety management programs and found them to be adequate.

The current Emergency Management program provides the appropriate training required for individuals to respond to alarms, abnormal operations, and emergencies across SRS. The Tritium Facilities EP program maintains a fully qualified team which performs approximately 50 drills per year to train and validate the organizations ability to respond to various scenarios, from weather induced incidents to large energetic events. SRS EP support

organizations, like the SRS Fire Department (FD), are trained and routinely evaluated to ensure that they can properly respond to an event in any facility across the site. For example, during the 2018 Site Exercise, the SRS emergency response team responded to a hypothetical complex multi-facility and multi-contractor event that included H-Area, Tritium, and H-Tank Farm. Site level evaluated exercise responses routinely involve multiple local, county, state, and federal agencies in the response efforts. In a trend to further challenge all response organizations, this latest exercise tested the Site's Emergency Response Organization (ERO) to manage a complex event with potential off-site consequences. There were issues identified in the exercise that SRS has addressed and continues to address to improve the program, including identifying logistical challenges in the movement of people from impacted areas and then conducting appropriately scoped drills to validate the effectiveness.

DOE-SR, as the landlord at SRS, has overall responsibility of the Emergency Management Program for the site. As a continuous improvement item, DOE-SR, in conjunction with DOE/NNSA, will perform an evaluation of the items listed in the Sub-recommendation 3. This evaluation will assess among other things the ability and preparedness of community emergency and medical resources. Results of this evaluation will be shared with the Board. Additionally, DOE-SR will reassess the program if Tritium source documents were to substantially change in the future.

DOE/NNSA actions and plans that would have responded to this recommendation are complete, underway, or planned and therefore are considered to have met the objectives of this Sub-recommendation. DOE/NNSA is willing to brief the DNFSB on these actions and keep the Board updated on a reoccurring basis.

In summary, DOE/NNSA has already initiated, and in some cases completed, the actions the DNFSB recommends and SRS tritium operations are providing adequate protection of public safety. Many significant long-term projects to enhance safety in SRS tritium operations are nearing completion. Notably, the ongoing major construction project to replace the HOAM Tritium Facilities with new, modern, and robust facilities is underway and is being supported by the Department and Congress.

These activities are significant and are the proper implementation of DOE/NNSA safety improvements at SRS.

Therefore, DOE/NNSA concludes that the most efficient, effective, and quickest way to improve safety at the SRS Tritium Facilities is to continue with the current approach and path forward. As previously noted, DOE/NNSA actions and plans that would have responded to this recommendation are complete or underway and therefore are considered to have met the issues highlighted and meet the intent of the recommendation.

[FR Doc. 2019-21438 Filed 10-1-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 21, 2019; 9:00 a.m. to 6:00 p.m., Friday, November 22, 2019; 8:30 a.m. to 4:00 p.m.

ADDRESSES: Bethesda Doubletree, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Michael Cooke, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC-25/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903-4140; email: Michael.Cooke@science.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following: November 21-22, 2019

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this

meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Michael Cooke, (301) 903-4140 or by email at: Michael.Cooke@science.doe.gov. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel website: <http://science.energy.gov/hep/hepap/meetings/>.

Signed in Washington, DC, on September 26, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019-21373 Filed 10-1-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Electricity Advisory Committee; Meeting

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Wednesday, October 16, 2019; 12:00 p.m.–6:00 p.m. EST

Thursday, October 17, 2019; 8:00 a.m.–12:15 p.m. EST

ADDRESSES: National Rural Electric Cooperative Association, First floor conference room, 4301 Wilson Blvd., Arlington, Virginia 22203 (Ballston Metro Stop).

FOR FURTHER INFORMATION CONTACT:

Christopher Lawrence, Office of Electricity, U.S. Department of Energy, Forrestal Building, Room 8G-017, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (202) 586-5260 or Email: christopher.lawrence@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Tentative Agenda

October 16, 2019

- 12:00 p.m.–1:00 p.m. Registration
- 1:00 p.m.–1:20 p.m. Welcome, Introductions, Developments since the June 2019 Meeting
- 1:20 p.m.–1:40 p.m. Update on Office of Electricity Programs and Initiatives
- 1:40 p.m.–2:00 p.m. Update of Office of Nuclear Energy Programs and Initiatives
- 2:00 p.m.–2:30 p.m. Presentation on the DOE Advanced Energy Storage Initiative
- 2:30 p.m.–2:45 p.m. Break
- 2:45 p.m.–3:15 p.m. Presentation on Future of Energy Storage
- 3:15 p.m.–4:00 p.m. Panel Presentations: *Energy Storage Deployment Case Studies*
- 4:00 p.m.–4:15 p.m. Break
- 4:15 p.m.–5:45 p.m. EAC Discussion with Storage Case Study Panelists
- 5:45 p.m.–6:00 p.m. Wrap-up and Adjourn Day 1

October 17, 2019

- 8:00 a.m.–8:10 a.m. Day 2 Opening Remarks
- 8:10 a.m.–8:30 a.m. Discussion of Department of Energy, Office of Electricity Synchrophasor and Sensor R&D Activities
- 8:30 a.m.–9:15 a.m. Panel Presentations: *Impediments to Leveraging Phasor Measurement Unit (PMU) Data and Synchrophasors*
- 9:15 a.m.–9:30 a.m. Break
- 9:30 a.m.–10:45 a.m. EAC Discussion with PMU and Synchrophasor Panelists
- 10:45 a.m.–10:50 a.m. Smart Grid Subcommittee Update
- 10:50 a.m.–11:05 a.m. Energy Storage Subcommittee Update
- 11:05 a.m.–11:30 a.m. Smart Grid Subcommittee Update

- 11:30 a.m.–11:40 a.m. Public Comments
- 11:40 a.m.–12:00 p.m. Annual Ethics Briefing for EAC Members
- 12:00 p.m.–12:10 p.m. Wrap-up and Adjourn

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: <http://energy.gov/oe/services/electricity-advisory-committee-eac>.

Public Participation: The EAC welcomes the attendance of the public at its meetings, no advanced registration is required. Individuals who wish to offer public comments at the EAC meeting may do so on Thursday, October 17, but must register at the registration table in advance. Approximately 10 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement identified by "Electricity Advisory Committee Open Meeting," to Christopher Lawrence at (202) 586-1472 (Fax) or email: Christopher.lawrence@hq.doe.gov.

Minutes: The minutes of the EAC meeting will be posted on the EAC web page at <http://energy.gov/oe/services/electricity-advisory-committee-eac>. They can also be obtained by contacting Mr. Christopher Lawrence at the address above.

Signed in Washington, DC, on September 26, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019-21365 Filed 10-1-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3011-000]

Natco Products Corporation; Notice of Withdrawal of Existing Licensee's Notice of Intent To File a Subsequent License Application, and Soliciting Pre-Application Documents and Notices of Intent To File a Subsequent License Application

On December 29, 2017, Natco Products Corporation (Natco or licensee) filed a Notice of Intent (NOI) to file an application for a subsequent license for its Artic Project No. 3011 (project), pursuant to section 16.19 of the

Commission's regulations.¹ On February 13, 2018, Commission staff issued a public notice of the NOI and approved the use of the traditional licensing process to develop the license application. The existing license for the project expires on December 31, 2022.²

On September 12, 2019, Natco filed a letter notifying the Commission of its intent to surrender its existing license for the project. Natco states in its filing that it is also withdrawing its NOI to file an application for a subsequent license.

Pursuant to section 16.25(a) of the Commission's regulations, when an existing licensee, having previously filed an NOI to file a license application for a project, subsequently does not file a license application, the Commission must solicit applications from potential applicants other than the existing licensee.³

Any party interested in filing a license application or exemption (*i.e.*, a potential applicant) for the project must file an NOI and pre-application document within 90 days from the date of this notice.⁴ While the integrated licensing process is the default process for preparing an application for a subsequent license, a potential applicant may request to use alternative licensing procedures when it files its NOI.⁵ An application for a subsequent license or exemption for the Artic Project No. 3011 must be filed within 18 months of the date of filing the NOI.

Questions concerning the process for filing an NOI should be directed to John Baummer at 202-502-6837 or john.baummer@ferc.gov.

Dated: September 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-21404 Filed 10-1-19; 8:45 am]

BILLING CODE 6717-01-P

¹ 18 CFR 16.19(b) (2019). At least five years before the expiration of a license for a minor water power project, the licensee must file with the Commission an NOI that contains an unequivocal statement of the licensee's intention to file or not to file an application for a subsequent license.

² The license for the project was issued with an effective date of January 1, 1983, for a term of 40 years. *Artic Development Corporation*, 22 FERC 62,097 (1983).

³ 18 CFR 16.25(a) (2019).

⁴ Pursuant to section 16.24(b)(2) of the Commission's regulations, the existing licensee is prohibited from filing an application for a subsequent license or exemption for the project, either individually or in conjunction with other entities. 18 CFR 16.24(b)(2) (2019).

⁵ 18 CFR 5.3(b) (2019).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2972-027]

City of Woonsocket, Rhode Island; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2972-027.

c. *Date filed:* November 1, 2018.

d. *Applicant:* City of Woonsocket, Rhode Island (City).

e. *Name of Project:* Woonsocket Falls Project.

f. *Location:* On the Blackstone River in the City of Woonsocket, Providence County, Rhode Island. There are no federal or tribal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael Debrouse, City of Woonsocket, Engineering, 169 Main Street, Woonsocket, RI 02895; (401) 767-9213.

i. *FERC Contact:* Patrick Crile, (202) 502-8042 or patrick.crile@ferc.gov.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-2972-027.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is ready for environmental analysis.

l. The existing Woonsocket Falls Project utilizes water from an impoundment that is created by the U.S. Army Corps of Engineers' (Corps) Woonsocket Falls Dam. The project consists of: (1) A 14-foot-wide, 20.5-foot-high concrete intake structure located about 60 feet upstream of the Woonsocket Falls Dam and fitted with a 12.4-foot-wide, 23.5-foot-high steel trash rack having 3.5-inch clear bar spacing; (2) a 275-foot long, 12-foot-wide, 10-foot-high concrete penstock; (3) a steel headgate integral with the powerhouse; (4) a 65-foot-long, 25-foot-wide, 20-foot-high concrete powerhouse containing one adjustable blade turbine-generator unit with an authorized capacity of 1,200 kilowatts; (5) a 50-foot-long, 12.5-foot-diameter steel draft tube; (6) an approximately 50-foot-long, 20-foot-wide, 15-foot-deep tailrace; (7) a 35-foot-long, 4.16 kilovolt (kV) generator lead line, a 4.16/13.8-kV step-up transformer, and a 1,200-foot-long, 13.8-kV transmission line connecting the project generator to the regional grid; and (8) appurtenant facilities.

The Woonsocket Falls dam and impoundment are owned and operated by the Corps for flood control purposes. The dam is equipped with four radial gates that typically remain closed for all flows less than 2,300 cubic feet per second (cfs). When river flow is less than 2,300 cfs, the impoundment is maintained at a water surface elevation of 147.5 feet North American Vertical Datum of 1988 (NAVD88). When river flow is greater than 2,300 cfs, the Corps begins opening the radial gates to maintain a water surface elevation of 147.3 feet NAVD88.

The dam and impoundment are operated in a run-of-river mode. When generating, the City conveys water through the intake structure on the east bank of the river, into the penstock and project powerhouse, and then discharges the water to the project tailrace and the Blackstone River.

The project bypasses approximately 360 feet of the Blackstone River and there is currently no required minimum

instream flow for the bypassed reach. However, a flow of 20 cfs is provided to the bypassed reach over the crest of the dam. When river flow is less than or greater than the hydraulic capacity of the turbine (*i.e.*, 230 cfs and 850 cfs, respectively), water is spilled over the dam into the bypassed reach. The Woonsocket Falls project has an average annual generation of approximately 4,584 megawatt-hours.

The City proposes to: (1) Operate the impoundment in a run-of-river mode pursuant to an operating plan and Memorandum of Agreement (MOA) with the Corps; (2) provide a year-round minimum flow of 20 cfs to the bypassed reach pursuant to an operating plan and MOA with the Corps; (3) provide upstream eel passage; and (4) implement nighttime turbine shutdowns during the downstream eel passage season to protect eels during passage.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction inspection and reproduction at the addresses in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST, MOTION TO INTERVENE, COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and

otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural Schedule:* The application will be processed according to the following revised schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of interventions, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	November 2019.
Commission issues Environmental Assessment.	April 2020.
Comments on Environmental Assessment.	May 2020.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: September 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-21408 Filed 10-1-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19-62-003.

Applicants: OneEnergy Baker Point Solar, LLC.

Description: Compliance filing: Reactive Power Settlement Compliance to be effective 12/1/2018.

Filed Date: 9/26/19.

Accession Number: 20190926-5114.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-668-001.

Applicants: Energy Center Dover LLC.

Description: Compliance filing: Informational Filing Re Upstream Change in Control and Request for Waiver to be effective N/A.

Filed Date: 9/26/19.

Accession Number: 20190926-5048.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2517-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Request to Hold Proceeding in Abeyance under Docket No. ER19-2517 to be effective 12/31/9998.

Filed Date: 9/25/19.

Accession Number: 20190925-5131.

Comments Due: 5 p.m. ET 10/16/19.

Docket Numbers: ER19-2529-001.

Applicants: Black Hills Wyoming, LLC.

Description: Tariff Amendment: Response to Staff Letter to be effective 10/2/2019.

Filed Date: 9/26/19.

Accession Number: 20190926-5040.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2864-000.

Applicants: Mankato Energy Center, LLC.

Description: § 205(d) Rate Filing: Mankato Amended Reactive Supply Service Tariff Filing to be effective 12/31/9998.

Filed Date: 9/25/19.

Accession Number: 20190925-5124.

Comments Due: 5 p.m. ET 10/16/19.

Docket Numbers: ER19-2865-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1518R18 Arkansas Electric Cooperative Corp NITSA NOA to be effective 9/1/2019.

Filed Date: 9/26/19.

Accession Number: 20190926-5026.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2866-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-09-26_Termination of SA 3219 Flying Cow Wind-OTP E&P (J493 J510) to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926-5038.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2867–000.
Applicants: Cameron Ridge, LLC.
Description: § 205(d) Rate Filing:
 Revised Market-Based Rate Tariff to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5039.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2868–000.

Applicants: Cameron Ridge II, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5041.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2869–000.

Applicants: San Gorgonio Westwinds II—Windustries, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5046.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2870–000.

Applicants: Victory Garden Phase IV, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5049.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2871–000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Rate Schedule No. 98 Cancellation to be effective 12/1/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5053.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2872–000.

Applicants: Pacific Crest Power, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5075.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2873–000.

Applicants: Ridgetop Energy, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5078.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19–2874–000.

Applicants: San Gorgonio Westwinds II, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff to be effective 9/27/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5084.

Comments Due: 5 p.m. ET 10/17/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–21406 Filed 10–1–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14635–001]

Village of Gouverneur, New York; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Original Minor License.
- b. *Project No.:* 14635–001.
- c. *Date Filed:* September 20, 2019.
- d. *Applicant:* Village of Gouverneur, New York.
- e. *Name of Project:* Gouverneur Hydroelectric Project.
- f. *Location:* The existing project is located on the Oswegatchie River, in St. Lawrence County, New York. The project does not occupy any federal lands.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(a).
- h. *Applicant Contact:* Ronald P. McDougall, Mayor, Village of Gouverneur, 33 Clinton Street, Gouverneur, NY 13642; (315) 287–1720
- i. *FERC Contact:* Jody Callihan, (202) 502–8278 or jody.callihan@ferc.gov.
- j. *Cooperating agencies:* Federal, state, local, and tribal agencies with

jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* November 19, 2019.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14635–001.

m. This application is not ready for environmental analysis at this time.

n. *The Gouverneur Project consists of the following existing facilities:* (1) A 250-foot-long concrete gravity dam, including two bridge piers, which separate the dam into three spillways that range in crest elevation from 403.4 to 403.7 feet North American Vertical Datum of 1988 (NAVD88); (2) an impoundment with a surface area of 109 acres at the normal pool elevation of 403.8 feet NAVD88; (3) a concrete intake structure containing two trash rack bays separated by a 2-foot-wide center pier; (4) a 20-foot-long by 36-foot-wide powerhouse that is integral with the dam and contains two vertical bulb turbines rated at 100 kilowatts each and two 100-kilovolt-ampere Westinghouse generators with a power factor of 0.8; and (5) appurtenant facilities.

The Village proposes to continue operating the project in a run-of-river

mode. In addition, the Village proposes to release a minimum flow of 110 cubic feet per second over the project's spillways. The project generated an annual average of 1,195 megawatt-hours between 2014 and 2017.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule and final amendments*: The application will be processed according to the following preliminary schedule. Revisions to the schedule may be made as appropriate.

Issue Deficiency Letter (if necessary):

November 2019

Request Additional Information:

November 2019

Issue Acceptance Letter: February 2020

Issue Scoping Document 1 for comments: March 2020

Request Additional Information (if necessary): May 2020

Issue Scoping Document 2 (if necessary): June 2020

Issue notice of ready for environmental analysis: June 2020

Commission issues Environmental Assessment (EA): December 2020

Comments on EA: January 2021

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-21409 Filed 10-1-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19-36-000]

Pilot Travel Centers LLC v. Colonial Pipeline Company; Notice of Complaint

Take notice that on September 25, 2019, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission's (Commission) 18 CFR 385.206 (2019), Part 343 of the Commission's Rules and Regulations, 18 CFR 343, *et seq.* (2019) and sections 1(5), 6, 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. 1(5), 6, 8, 9, 13, 15, and 16 and section 1803 of the Energy Policy Act of 1992, Pilot Travel Centers LLC (Complainant) filed a formal complaint against Colonial Pipeline Company (Colonial or Respondent) challenging the justness and reasonableness of (1) Colonial's cost-based transportation rates in Tariff F.E.R.C. No. 99.52.0 and predecessor tariffs; (2) Colonial's market-based rate authority and rates charged pursuant to that authority; and (3) Colonial's charges relating to product loss allocation and transmix, all as more fully explained in the complaint.

Pilot certifies that copies of the complaint were served on the contacts for Colonial as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the eLibrary link and is available for review in the

Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on October 25, 2019.

Dated: September 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-21405 Filed 10-1-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP19-511-000.

Applicants: Gulf South and Enable Gas Transmission.

Description: Joint Abbreviated Application for Certificate of Public Convenience and Necessity, Abandonment, Acquisition, and Related Authorizations of Gulf South Pipeline Company, LP, et al. under CP19-511.

Filed Date: 9/23/19.

Accession Number: 20190923-5145.

Comments Due: 10/15/19.

Docket Numbers: RP19-1596-000.
Applicants: Young Gas Storage Company, Ltd.

Description: Annual Operational Purchases and Sales Report of Young Gas Storage Company, Ltd. under RP19-1596.

Filed Date: 9/25/19.

Accession Number: 20190925-5049.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: RP19-1597-000.
Applicants: Wyoming Interstate Company, L.L.C.

Description: Annual Operational Purchases and Sales Report of Wyoming Interstate Company, L.L.C. under RP19-1597.

Filed Date: 9/25/19.

Accession Number: 20190925-5060.

Comments Due: 5 p.m. ET 10/7/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 26, 2019.

Nathaniel J. Davis Sr.,

Deputy Secretary.

[FR Doc. 2019-21407 Filed 10-1-19; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10000-70-Region 5]

Public Water System Supervision Program Approval for the State of Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has tentatively approved a revision to the state of Minnesota's Public Water System Supervision Program under the federal Safe Drinking Water Act (SDWA) by adopting the Revised Total Coliform Rule. The EPA has determined that this revision is no less stringent than the corresponding federal regulation. Therefore, the EPA intends to approve this revision to the state of Minnesota's Public Water System Supervision Program, thereby giving Minnesota Department of Health primary enforcement responsibility for this regulation. This approval action does not extend to public water systems in Indian Country. By approving this rule, EPA does not intend to affect the rights of federally recognized Indian Tribes in Minnesota, nor does it intend to limit existing rights of the State of Minnesota.

DATES: Any interested party may request a public hearing on this determination. A request for a public hearing must be submitted by November 1, 2019. The EPA Region 5 Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by

November 1, 2019, EPA Region 5 will hold a public hearing, and a notice of such hearing will be published in the **Federal Register** and a newspaper of general circulation. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on November 1, 2019 and no further public notice will be issued.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for official holidays: Minnesota Department of Health, Drinking Water Protection Section, 625 N Robert St., St. Paul, MN 55164; and the U.S. Environmental Protection Agency Region 5, Ground Water and Drinking Water Branch (WG-15J), 77 W Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Janet Kuefler, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at 312-886-0123, or at kuefler.janet@epa.gov.

Authority: Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g-2, and the federal regulations implementing Section 1413 of the Act set forth at 40 CFR part 142.

Dated: September 18, 2019.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2019-21467 Filed 10-1-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2018-0265; FRL-10000-29]

Antimicrobial Performance Evaluation Program (APEP): Draft Risk-Based Strategy To Ensure the Effectiveness of Hospital-Level Disinfectants; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of and soliciting public comment on the draft document, "Antimicrobial Performance Evaluation Program (APEP): A (Draft) Risk-Based Strategy to Ensure the Effectiveness of Hospital-Level Disinfectants" (hereafter referred to as the draft Strategy). This draft Strategy was developed by the EPA Office of Chemical Safety and Pollution Prevention (OCSPP) in response to the EPA Office of Inspector General (OIG) report titled: "EPA Needs a Risk-Based Strategy to Assure Continued Effectiveness of Hospital-Level Disinfectants." The draft Strategy provides a framework to ensure that registered hospital-level disinfectants and tuberculocide products continue to meet Agency efficacy standards once they are in the marketplace.

DATES: Comments must be received on or before December 2, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2018-0265, 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: For general information contact: Kristen Willis, Antimicrobials Division (7510P), Office of Pesticide Programs,

Environmental Protection Agency, Antimicrobials Division, 2777 S Crystal Drive, Arlington, VA 22202; telephone number: (703) 347-0515; email address: willis.kristen@epa.gov.

For technical information contact: Tajah Blackburn, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, Antimicrobials Division, 2777 S Crystal Drive, Arlington, VA 22202; telephone number: (703) 347-0260; email address: blackburn.tajah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Introduction

A. Does this action apply to me?

This action is directed to the general public. This action may be of interest to health care/hospital professionals and all entities who have EPA registered antimicrobial products that are available in the marketplace, particularly those with products that make hospital disinfectant claims (e.g., claims against *Staphylococcus aureus* and *Pseudomonas aeruginosa*) and other claims for notable public health pests (e.g., *Clostridium difficile*, methicillin resistant *Staphylococcus aureus*, *Mycobacterium* spp.). The Agency has not attempted to describe all specific entities that may be affected by this action. For questions regarding the applicability of this action, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT** section of this notice.

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

This action is issued under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.* and the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a.

C. What action is the Agency taking?

EPA is announcing the availability of and opportunity for public comment on the document, titled "Antimicrobial Performance Evaluation Program (APEP): A (Draft) Risk-Based Strategy to Ensure the Effectiveness of Hospital-Level Disinfectants."

D. What should I consider as I prepare my comments for EPA?

The following should be considered when preparing comments for submission to EPA:

1. **Submission of Confidential Business Information (CBI).** Do not submit CBI to EPA through [regulations.gov](http://www.regulations.gov) or email. If submission of CBI is necessary, it should be mailed directly to EPA. Information that is

claimed to be CBI should be clearly indicated. For CBI information submitted as a disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to the 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>.

3. **Electronic access to the draft Strategy document.** You may access the draft Strategy in [regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, under docket ID number: EPA-HQ-OPPT-2018-0265.

II. Background

A. The OIG Report: EPA Needs a Risk-Based Strategy to Assured Continued Effectiveness of Hospital-Level Disinfectants

On September 19, 2016, the EPA Office of Inspector General (OIG) issued a report (No. 16-P-0316) titled "EPA Needs a Risk-Based Strategy to Assured Continued Effectiveness of Hospital-Level Disinfectants." In this report, the OIG provided two recommendations: (1) Suspension of the Agency's Antimicrobial Testing Program (ATP) until EPA completes the reregistration process for antimicrobial pesticides; and (2) the development of a risk-based strategy to ensure the effectiveness of hospital-level disinfectants once products are in the marketplace.

The OIG recommended that the strategy, at a minimum, include: (1) A framework for periodic testing after product registration; (2) a program scope that is flexible and responsive to current public health risks; (3) risk factors for selecting products to be tested; (4) a method/process for collecting samples for testing; and (5) a date to begin the risk-based post-registration testing. In response to the first recommendation, EPA suspended the ATP in November 2017.

B. How was this draft strategy developed?

EPA developed the draft Strategy based on the general recommendations provided by the OIG. The Agency held a public listening session on June 21,

2018 to seek preliminary input from stakeholders on their early thoughts for the development of the draft Strategy. The materials presented during the listening session were published and made available for public comment. The materials presented during the listening session as well as all submitted public comments are available at <http://www.regulations.gov>, under docket ID number: EPA-HQ-OPPT-2018-0265.

III. Overview

A. What is the antimicrobial performance evaluation program draft Strategy?

This draft Strategy employs a risk-based approach to inform the Agency on the prioritization and selection of hospital-level disinfectants and associated label claims for testing. The proposed risk-based criteria consist of the following in order of priority: (1) Product label claims for specific microbes and disease prevalence data; (2) evaluation of uncommon label claims and unique product application processes; and (3) evaluation of products tested using new and/or recently revised methods. The following additional refinement factors may also be considered to further prioritize product selection and testing: (a) Issues identified during post-registration, product reregistration, and registration review; (b) trends observed under the previous testing program (ATP); and (c) products with high production volumes. Improving the product selection process and evaluating specific label claims of critical importance to public health are key features of the proposed testing program.

The Agency is considering the following two options individually or in combination for obtaining samples for testing: (1) EPA purchase of products in the marketplace, and (2) product samples provided by the registrant. Several options for allocating efficacy and chemistry testing resources may be utilized individually or in combination; these options include: (1) Office of Pesticide Programs Microbiology Laboratory and the Analytical Chemistry Laboratory, (2) interagency agreements and contracts; (3) third party verification testing; and (4) registrant testing; and/or Data Call-Ins. EPA proposes to issue multi-year workplans two years prior to implementation to allow for public review and comment. At the end of testing, the Agency will provide the registrant with a memo summarizing the results and next steps attached to the Biological Report of Analysis detailing product specific results. A summary table will be

published on the APEP website to communicate the testing results to the public. The Agency plans to begin implementation of the new risk-based testing program by 2022 when the initial round of registration review is completed.

The Agency will maintain flexibility responding to evolving healthcare issues that may require the risk factors to be updated periodically as new, relevant information becomes available. The Agency is soliciting feedback on the proposed draft Strategy to include specific questions (Unit III.B). As necessary, respondents may propose alternatives to the recommendations described in the draft Strategy, and the Agency will consider them for inclusion appropriateness on a case-by-case basis.

At places in these guidance documents, the Agency uses the word "should." In this document, use of "should" with regard to an action means that the action is recommended rather than required.

B. What topics is the Agency seeking public input on?

The Agency is particularly interested in input from all interested stakeholders related to the following questions:

Focus Questions

1. Please comment on the proposed risk factors and refinements, their proposed prioritization, their strengths and limitations, and recommendations for other risk factors not considered.

2. Are the options provided for sample collection suitable for the purpose of the testing program, and if not, what approaches would you suggest to optimize sample collection. Please provide advantages and disadvantages to your recommendations as appropriate.

3. Should the Agency and/or stakeholders conduct the laboratory evaluation (formulation chemistry and product efficacy) of disinfectant products? Provide examples to support your opinions and itemize situations where one approach would be more favorable versus the other.

4. Please comment on the flexibility and feasibility of the example workplan approach (See Appendix A, draft Strategy).

5. Please comment on the proposed communication strategy to convey test results to registrants and the general public including the preferred frequency of updates.

6. Please provide suggested routes for resolution of efficacy failures. Previously, these were addressed by "regulatory fixes" to include retesting, label amendments, etc.

IV. References

Documents that are referenced in the draft Strategy document can be found at <http://www.regulations.gov>, under docket ID number: EPA-HQ-OPPT-2018-0265. The docket includes these documents and other information considered by EPA. For assistance in locating any of these documents, please consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects: Environmental protection, Administrative practice and procedure, Pesticides.

Dated: September 26, 2019.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2019-21401 Filed 10-1-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards 57, Omnibus Amendments 2019

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards 57, *Omnibus Amendments 2019*.

The Statement is available on the FASAB website at <https://www.fasab.gov/accounting-standards/>. Copies can be obtained by contacting FASAB at (202) 512-7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street, NW, Suite 1155, Washington, DC 20548, or call (202) 512-7350.

Authority: Federal Advisory Committee Act, Pub. L. 92-463.

Dated: September 27, 2019.

Monica R. Valentine,

Executive Director.

[FR Doc. 2019-21451 Filed 10-1-19; 8:45 am]

BILLING CODE 1610-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0288]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments shall be submitted on or before December 2, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0288.

Title: 47 CFR 78.33, Special Temporary Authority (Cable Television Relay Stations).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 35 respondents and 35 responses.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 140 hours.

Total Annual Costs: \$5,250.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impacts.

Needs and Uses: The information collection requirements contained in 47 CFR 78.33 permits cable television relay station (CARS) operators to file informal requests for special temporary authority (STA) to install and operate equipment in a manner different than the way normally authorized in the station license. The special temporary authority also may be used by cable operators to conduct field surveys to determine necessary data in connection with a formal application for installation of a radio system, or to conduct equipment, program, service, and path tests.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019-21411 Filed 10-1-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551-0001, not later than October 18, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Eric P. Stone; S. Adam Stone; and the Stone Revocable Trust dated December 8, 1987, Peter E. Stone and Barbara E. Stone as co-trustees, all of Fond du Lac, Wisconsin;* to be approved as members acting in concert with the Stone Family Control Group, to retain voting shares of NEB Corporation, parent holding company of National Exchange Bank & Trust, both of Fond du Lac, Wisconsin.

Board of Governors of the Federal Reserve System, September 27, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019-21453 Filed 10-1-19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal

Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551-0001, not later than November 4, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Cornerstone Bank, York, Nebraska;* to become a bank holding company by acquiring Malmo Bancorp, Inc., parent holding company of Security Home Bank, both of Malmo, Nebraska. In addition, First York Ban Corp, York, Nebraska, through its subsidiary, Cornerstone Bank, York, Nebraska, to acquire Malmo Bancorp, Inc., parent holding company of Security Home Bank, both of Malmo, Nebraska.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Third Coast Bancshares, Inc., Humble, Texas;* to acquire Heritage Bancorp, Inc., parent holding company of Heritage Bank, both of Pearland, Texas.

C. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210-2204. Comments can also be sent electronically to BOS.SRC.Applications.Comments@bos.frb.org:

1. *NB Financial, MHC and NB Financial, Inc., both of Needham, Massachusetts;* to become a mutual bank holding company and a mid-tier stock bank holding company, respectively, by acquiring Needham Bank, Needham, Massachusetts, in connection with the conversion of Needham Bank from mutual to stock form.

Board of Governors of the Federal Reserve System, September 27, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019-21455 Filed 10-1-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Community Services Block Grant (CSBG) Annual Report (OMB No.: 0970-0492)

AGENCY: Office of Community Services; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration of Children and Families (ACF), Office of Community Services (OCS) is requesting a three-year extension with minor changes of the Community Services Block Grant (CSBG) Annual Report (OMB No.: 0970-0492, expiration 1/31/

2020). This request will support the currently utilized CSBG Annual Report, comprised of Modules 1-4, and incorporates performance management.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing infocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street

SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Module 1 includes minor edits to align with the revised, and OMB approved, CSBG State Plan (OMB No. 0970-0382). Module 2, Module 3, and Module 4 include only technical updates for ease and clarity of current reporting. Copies of the proposed collection of information can be obtained by visiting: <http://www.acf.hhs.gov/programs/ocs/programs/csbg>.

Respondents: State governments, including the District of Columbia and the Commonwealth of Puerto Rico, and U.S. territories and CSBG eligible entities (Community Action Agencies).

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
CSBG Annual Report (States)	52	1	164	8,528
CSBG Annual Report (Eligible Entities)	1,035	1	242	250,470

Estimated Total Annual Burden Hours: 258,998.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 112 Stat. 2729; 42 U.S.C. 9902(2).

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2019-21416 Filed 10-1-19; 8:45 am]

BILLING CODE 4184-27-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Continued Information Collection Activity; Evaluation of the Child Welfare Capacity Building Collaborative, Part Two (OMB Number: 0970-0494)

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a three-year extension of the previously approved forms that include satisfaction surveys; surveys to assess jurisdiction's foundational capacity; a workshop follow-up survey; webinar and online learning registration forms; and service-specific feedback forms and interview protocol (OMB Number: 0970-0494, expiration March 31, 2020). This request includes one new innovation survey, and requests minor changes to the webinar and online learning registration forms. Three instruments from the original approval are not included with this request. This requested extension relates to a second set of instruments, which are part of a larger data collection effort being

conducted for the evaluation of the Child Welfare Capacity Building Collaborative. An extension request for the first group of evaluation instruments was submitted on April 24, 2019, (OMB Number: 0970-0484, FR, 84(79)).

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing infocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Evaluation of the Child Welfare Capacity Building Collaborative is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services. The Capacity Building Collaborative includes three centers

(Center for States, Center for Tribes, and Center for Courts) funded by the Children’s Bureau to provide national child welfare expertise and evidence-informed training and technical assistance services to state, tribal, and territorial public child welfare agencies and Court Improvement Programs (CIPs). The Centers offer a wide array of services including, but not limited to: Web-based content and resources, product development and dissemination, self-directed and group-based training, virtual learning and peer networking events, and tailored consultation and coaching. During the project period, Center services are evaluated by both Center-specific evaluations and a Cross-Center Evaluation. The Center-specific evaluations are designed to collect data on Center-specific processes and outcomes, which are used to support service delivery and continuous quality improvement. The Cross-Center Evaluation is designed to respond to a

set of cross-cutting evaluation questions posed by the Children’s Bureau, which examines: How and to what extent key partners across and within Centers collaborate; whether Center capacity building service interventions are evaluable; the degree to which Centers follow common protocols; what service interventions are delivered and which jurisdictions participate; how satisfied recipients are with services; what outcomes are achieved in jurisdictions receiving Center services and under what conditions are services effective; and what are the costs of services.

The Cross-Center Evaluation uses a longitudinal, mixed methods approach to evaluate Center services as they develop and mature over the study period. Multiple data collection strategies are used to efficiently capture quantitative and qualitative data to enable analyses that address each evaluation question. Cross-Center Evaluation data sources for this effort for which an extension is being sought

include: (1) A foundational assessment to capture contextual data regarding the organizational health and functioning of child welfare agencies and courts; (2) a workshop follow-up survey that examines short-term and intermediate outcomes among CIPs that receive different levels of tailored services following continuous quality improvement (CQI) workshops; and (3) a tailored services satisfaction survey. Center-specific data sources for this effort include: (1) Registration forms for webinar registration and CapLearn, a learning management system; and (2) service-specific feedback forms and interviews, such as the Center for States Tailored Services interview protocol, the Center for States Innovation survey, and the Center for Courts Universal and Constituency Services survey.

Respondents: (1) Child welfare agency staff and stakeholders who receive services from the Centers; and (2) CIP coordinators, CIP Directors, and other project staff.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Foundational Assessment Survey	831	277	1	.1	28
CQI Workshop Follow-Up Survey	144	48	2	.12	12
Tailored Services Satisfaction Survey	1,386	462	1	.083	38
CapLearn Registration	1,800	600	1	.083	50
Webinar Registration	13,950	4,650	1	.03	140
Center for Courts: Universal and Constituency Services	312	104	1	.41	43
Center for States: Tailored Services Interviews	180	60	1	1	60
Center for States: Assessment and Workplanning Survey	450	150	1	.25	38
Center for States: Innovation Survey	150	50	1	.083	4
Total					413

Estimated Total Annual Burden Hours: 413.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 5106.

Mary B. Jones,
ACF/OPRE Certifying Officer.
 [FR Doc. 2019-21361 Filed 10-1-19; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Docket No.: HHS-ACF-2019-0005]

RIN 0970-ZA15

Improving Access to Affordable, High Quality Child Care: Request for Information

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Notice; request for information.

SUMMARY: As part of the Administration for Children and Families (ACF) commitment to supporting working families and promoting the healthy development and well-being of children, ACF is seeking input from the public and interested stakeholders on strategies to improve access to high quality, affordable child care in the U.S. Child care is one of the biggest expenses a family faces and can be a barrier to work. The average cost of center-based infant child care in 28 states is more than college tuition. At the same time, child care settings are a place of learning and education for children from the time they are infants and toddlers through their school-age years. Access to high quality learning opportunities lays the foundation for children’s development and, ultimately,

their success in school and in life. Unfortunately, many families do not have access to the affordable, high quality child care their children need. This Request for Information seeks public comment on: Identifying emerging and innovative practices to improve access to high quality child care, as well as identifying regulatory and other policies that unnecessarily drive up the cost of care or limit parents' choice of different child care options; and identifying ways to improve funding of child care and other related early education programs to support quality and create a more streamlined, equitable, and sustainable financing framework for future generations. Information collected through this request may be used by ACF in the development of future rulemaking and technical assistance, formation of legislative proposals and research agendas, and/or strategic planning.

DATES: Submit comments by December 2, 2019.

ADDRESSES: You may send comments, identified by [docket number and/or RIN number], by either of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow instructions for sending comments. We prefer to receive comments via this method.

- *Mail:* Office of Child Care, Attention: Request for Information, 330 C Street SW, Washington, DC 20201.

Instructions: We urge you to submit comments electronically to ensure they are received in a timely manner. All submissions received must include our agency name and the docket number or Regulatory Information Number (RIN) for this notice. All comments will be posted without change to <https://www.regulations.gov>, including any personal information provided. We accept anonymous comments. If you wish to remain anonymous, enter "N/A" in the required fields.

FOR FURTHER INFORMATION CONTACT: Andrew Williams, Office of Child Care, Administration for Children and Families, 330 C Street SW, Washington, DC 20201; (202) 690-6782.

SUPPLEMENTARY INFORMATION:

Background

ACF is focused on finding innovative solutions to improve working families' access to affordable, high quality child care, as well as investigating how access to child care affects America's workforce, present and future. Child care is one of the biggest expenses a family faces and can be a barrier to

work. The average cost of center-based infant child care in 28 states is more than college tuition.¹ Evidence on the effects of child care costs on labor supply suggests that some parents, particularly women, would enter the labor force, or increase their work hours, if the cost of child care was lower.² One study found that a 10 percent increase in child care costs is associated with a 7.4 percent decline in women's labor force participation.³ The impact of child care challenges extends beyond families. Employee absences and turnover resulting from lack of reliable and affordable child care can cost employers, and impact overall economic development by reducing productivity and constricting the labor market.⁴ Policies that reduce the cost of child care could help maintain and bring more Americans into the workforce, increase opportunities for families, and ensure that strong economic growth is inclusive and sustained in the future.

At the same time, there is concern about the quality of child care and ensuring that child care settings are a place of education that promote and enhance child and youth development and well-being. High quality child care is a critical investment that pays off now, for parents by enabling them to work, and later, by supporting children's development and success in school and life. Research has shown that high quality learning environments are important for the cognitive, language, and social development of children,⁵ and that investments have the potential to generate economic returns in the long-run.⁶ State child care licensing and regulatory systems act as a foundation to ensure basic health and safety of child care settings, primarily based on structural and environmental factors.

¹ "The US and the High Cost of Child Care," Child Care Aware of America, 2018 Report. The term "states" includes the District of Columbia.

² "Work and the Cost of Child Care," Council of Economic Advisors, February 2019.

³ "How to Improve Economic Opportunity for Women," Aparna Mathur and Abby McCloskey, American Enterprise Institute, June 2014.

⁴ "Lost Opportunities: The Impact of Inadequate Child Care on Indiana's Workforce & Economy," Laura Littlepage, Indiana University Public Policy Institute, June 2018; "Opportunities Lost: How Child Care Challenges Affect Georgia's Workforce and Economy," Hanah Goldberg, Tim Cairl, and Thomas J. Cunningham, Georgian Early Education Alliance for Ready Students and Metro Atlanta Chamber, 2018.

⁵ "Quality Thresholds, Features, and Dosage in Early Care and Education: Secondary Data Analyses of Child Outcomes," Edited by: Margaret Burchinal, Martha Zaslow, and Louisa Tarullo, Society for Research in Child Development, June 2016.

⁶ "Quantifying the Life-cycle Benefits of a Prototypical Early Childhood Program," Jorge Luis Garcia, James J. Heckman, Duncan Ermini Leaf, and Maria Jose Prados, May 2017.

Many states have implemented quality rating and improvement systems with additional tiered requirements above those established by licensing and regulatory systems, in order to help child care providers strive toward higher quality care.⁷ The challenge ahead is making sure that standards of quality are dynamic and suited to different types of child care settings serving the full age and developmental range of children, so that parents continue to have choice, and quality standards are attainable by the full range of child care providers.

Respecting the role that parents play in choosing the care that is best suited to their child's needs, and their own values, culture, and work schedules (including non-traditional hours), is critical. One-size fits all directives on what constitutes high quality child care can be counter-productive if they effectively limit the number of child care providers left in the market from which parents can choose. The number of licensed, small family child care homes (with a sole caregiver in a residential setting) fell by 35 percent from 2011 to 2017.⁸ This request for information seeks public comment on innovative ways to address the affordability and access crisis of child care in the U.S., without compromising on quality.

What We Are Looking for in Public Comments

ACF is looking for an honest assessment of child care in the U.S. from the public and from a diverse array of stakeholder groups in order to inform the development of recommendations and/or future guidance. This includes parents who use child care, including parents of children with disabilities; small child care businesses, including family child care home providers; large and chain child care providers; pre-k groups; school administrators; child care regulators; state and local officials; employers; state and local chambers of commerce; foundations; faith-based and other community organizations; family child care networks; child care resource and referral agencies; universities and other institutions of higher education; child care workforce development organizations; economic development organizations; etc.

⁷ *QualityCompendium.org*. A Catalog and Comparison of Quality Initiatives like Quality Rating and Improvement Systems (QRIS), Build Initiative.

⁸ "Addressing the Decreasing Number of Family Child Care Providers in the United States," National Center on Early Childhood Quality Assurance, July 2019.

In order to make it easier for the public to comment, some of the questions on which ACF seeks public comment indicate specific stakeholder groups that might be particularly interested in the topic area. Commenters should identify the question to which they are responding by indicating the corresponding letter and number(s). We request commenters who identify barriers or policies to indicate, with a citation if possible, the source/level (e.g., Federal, State, local) of the barrier or policy, as well as the types of child care providers (e.g., centers, family child care homes) that are impacted.

A. Improving Access to Affordable, High Quality Child Care

1. Building Supply of Child Care. Many communities across the country are experiencing a shortage of child care providers, particularly for certain kinds of care, such as for infants and toddlers, for children with disabilities, in rural areas, and during non-traditional hours. The agency seeks public feedback on:

a. Areas where there are specific barriers to child care providers entering the market, specifically what those barriers are (e.g., legislation, regulation, guidance, current practice, etc.), and the source of those barriers (e.g., federal, state, or local).

b. Successful strategies for building the supply of high quality, affordable child care in underserved areas.

(Stakeholders: Child care providers, child care regulatory agencies, employers, economic and community development organizations, community organizations, state and local officials).

2. Improving Child Care Regulations. Child care licensing, regulatory and monitoring frameworks are the basis for ensuring that child care settings are healthy and safe for children. However, policies to regulate the health and safety of child care settings are created separately at the federal, state (e.g., child care licensing) and local levels (e.g., zoning laws), which can result in an overlay of sometimes contradictory policies and procedures.

a. ACF seeks information on ways to ensure that regulatory and monitoring practices are not duplicative, inconsistent, and/or unintentionally driving up the cost of providing care, reducing availability, or pushing different types of providers, such as faith-based or home-based family child care providers, out of the market.

b. We also seek comment on the degree to which licensing requirements need to be tailored to the unique structures of different types of providers, and how monitoring for compliance could be used to support

providers in their pursuit of providing high quality care.

(Stakeholders: Child care providers, child care regulatory agencies, economic and community development organizations, community-based organizations, state and local officials, parents).

3. Cultivating the Child Care Workforce. An important component of high quality child care, particularly for young children, is ensuring a nurturing, responsive relationship with caregivers.⁹ Removing barriers and introducing multiple pathways and career ladders for educators and caregivers to gain the skills and competencies they need to provide high quality care, without incurring undue student loan debt, can help to encourage more individuals to enter, and stay in, the child care workforce.

a. ACF seeks public comment on what competency-based, short-term training models, apprenticeships, and stackable credentialing support (i) recruitment and (ii) professional development of early childhood educators.

(Stakeholders: Child care providers, institutions of higher education, child care provider associations, workforce development organizations, community organizations, businesses, child care administrators).

4. Developing Better Child Care Business Models. Most child care providers operate as a small business and may be nonprofit or for-profit, home-based or center-based, religious/faith-based or public institutions.

a. ACF seeks public comment on promising and innovative strategies for improving business practices and promoting business development of child care providers in the private sector. This includes improving access to financing for building facilities to assist new providers in entering the market.

b. Specifically, the agency is interested in comments about shared services alliances and consortia established to share overhead costs, improve fiscal and program management, and support access to preexisting training and resources for improving quality (including technology and non-personnel resources).

c. ACF is interested in learning how states and providers are adjusting in states and localities that have expanded public pre-kindergarten programs, and how child care providers are addressing the loss of preschool-aged slots which

previously offset the costs of more expensive infant and toddler slots.

(Stakeholders: Child care providers, child care regulatory agencies, economic and community development organizations, family child care networks, community organizations, businesses, state and local chambers of commerce).

B. Transforming Financing of Child Care and Early Education Programs

The public portion of financing for child care and early education in the United States involves multiple programs and funding streams, administered by various agencies at the federal, state, and local levels, often with different eligibility requirements and quality standards.¹⁰ This creates challenges to families and communities in navigating these differences, and can lead to overlap in some areas and gaps in services in others. The Every Student Succeeds Act (Pub. L. 114–95) requires the U.S. Department of Health and Human Services, in consultation with other federal agencies, to issue and annually update a report that outlines the efficiencies that can be achieved by, and specific recommendations for, eliminating overlap and duplication among all federal early childhood education programs. So long as Federal and State funding continues to be fragmented across multiple delivery systems, the challenges families face in accessing high quality and affordable care, will persist. Over the past decade, public support for child care and early learning programs has grown, at both the federal and state level, yet as these challenges are contemplated, more attention should be paid to our current system and whether it is the right foundation upon which to build.

1. ACF seeks public comment on more effectively using existing federal and state resources to align and strengthen the delivery of child care and early education, and ideas for improving the financing framework to better support future investment. This includes recommendations to streamline or combine existing resources and programs in order to improve the overall participation of children in a mixed delivery system, improving program quality while maintaining availability of services, expanding parental choice, and enhancing access for children from low-income and disadvantaged families. The agency encourages commenters to think about the following:

⁹“Including Relationship-Based Care Practices in Infant-Toddler Care: Implications for Practice and Policy,” Network of Infant/Toddler Researchers, May 2016.

¹⁰“Transforming the Financing of Early Care and Education,” National Academies of Sciences, Engineering, and Medicine, 2018.

a. Barriers that exist in the governance and funding structures of current programs that limit the most efficient use of local, state and federal resources.
 b. Ideas for alternative financing frameworks or models that better leverage the significant investment in

child care and early education funding already in place at the federal and state levels (outlined in the table below), including ideas that are outside the current framework or that re-envision existing programs.

c. Examples of innovative models and practices, especially those that include private sector investments and partnerships, that help to maximize child care resources.

MAJOR SOURCES OF U.S. EARLY CARE AND EDUCATION FUNDING

Direct Federal Funding *	
Child Care and Development Fund (CCDF)	\$8.2 billion.
Head Start/Early Head Start/Early Head Start-Child Care Partnerships	\$10.1 billion.
Temporary Assistance for Needy Families **	Approx. \$3 billion.
Preschool Development Grants Birth through Five	\$250 million.
Social Services Block Grant ***	Approx. \$280 million.
Federal Tax Credits/Subsidies ****	
Child and Dependent Care Tax Credit	\$4.44 billion.
Employer-Provided Child Care Exclusion	\$680 million.
Employer-Provided Child Care Credit	\$20 million.
State Funding	
State Match and Maintenance-of-Effort for CCDF	Approx. \$2 billion.
State Pre-K Spending *****	\$8.4 billion.
Total	Approx. \$37 billion.

* Funding represents fiscal year 2019 enacted unless otherwise indicated. The U.S. Department of Health and Human Services awards and oversees the funding sources listed in this section.
 ** Based on FY 2017 financial data, the latest year for which data is available. Includes transfer to CCDF and direct spending on child care from the Temporary Assistance for Needy Families program: https://www.acf.hhs.gov/sites/default/files/ofa/tanf_financial_data_fy_2017_12819_508_compliant.pdf.
 *** Spending on child care from the Social Services Block Grant as of FY 2016, the latest year for which data is available: <https://www.acf.hhs.gov/ocs/resource/ssbg-fact-sheet>.
 **** FY 2019: https://www.whitehouse.gov/wp-content/uploads/2019/03/ap_16_expenditures-fy2020.pdf. Cost for exclusion includes income tax reduction only; does not include payroll tax reduction. The U.S. Department of the Treasury is the federal agency responsible for administering these tax policies.
 ***** National Institute for Early Education Research: http://nieer.org/wp-content/uploads/2019/05/YB2018_Executive-SummaryR.pdf.

Collection of Information Requirements

Please note: This is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency’s full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposals (RFPs), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or to make a grant award. Further, we are

not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in responding to this RFI; all costs associated with responding to this RFI will be solely at the interested party’s expense. We note that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. In addition, ACF will not respond to questions about the policy issues raised in this RFI.

We will actively consider all input as we develop future regulatory proposals or future sub-regulatory policy guidance. We may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders’ written responses. Contractor support personnel may be used to review responses to this RFI.

Responses to this notice are not offers and cannot be accepted by the U.S. Government to form a binding contract or to issue a grant. Information obtained as a result of this RFI may be used by the U.S. Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. In addition, we will publicly post the public comments received, or a summary of those public comments.

Dated: September 27, 2019.
Lynn A. Johnson,
Assistant Secretary, Administration for Children and Families.
 [FR Doc. 2019–21530 Filed 9–30–19; 4:15 pm]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Formative Evaluation of Family Unification Program (FUP) Vouchers for Youth Transitioning Out of Foster Care (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Planning, Research, and Evaluation is requesting public comment on data collection activities as part of the Formative Evaluation of Family Unification Program (FUP) Vouchers for Youth Transitioning Out of Foster Care. The purpose of the request is to conduct information collection activities, including an online survey, interviews, and focus group discussions.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995, the Administration for Children and Families (ACF) is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing OPREinfocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:
Description: The ACF Office of Planning, Research, and Evaluation is proposing a new information collection. The information collection activities are part of the Formative Evaluation of Family Unification Program (FUP) Vouchers for Youth Transitioning Out of Foster Care. The purpose of the request is to conduct information collection activities, which consist of an online survey of FUP liaisons from agencies

and organizations serving transition-age youth in foster care and site visits to selected agencies and organizations that have allocated a significant number of FUP vouchers to youth. During site visits, staff from the Urban Institute and Chapin Hall at the University of Chicago will interview agency and program leaders, frontline staff, and participants. The information collection also includes collection of administrative data from sites selected for visits. This descriptive work will capture how FUP for youth has been administered on the ground, how eligible youth are identified and referred by the public child welfare agency (PCWA), barriers to obtaining a voucher or leasing-up into housing, what public housing authorities (PHAs) and public child welfare agencies have done to streamline the application process, and other aspects of program operations. The activities and products from this project will help ACF to fulfill its ongoing legislative mandate for program evaluation specified in the Foster Care Independence Act of 1999.

Respondents: PCWA and PHA agency administrators, program managers/FUP liaisons, front-line staff, and young adults being served by FUP.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
PHA survey	111	56	1	0.62	35
PCWA survey	72	36	1	0.62	22
CoC survey	99	50	1	0.62	31
Interview guide for FSS manager	8	4	1	1	4
Interview guide for CoC lead organization administrator and FUP liaison	16	8	1	1	8
Focus group guide for PHA intake workers and case managers	192	96	1	1.5	144
Focus group guide for PCWA caseworkers, referring partners, and service provider partners	312	156	1	1.5	234
Interview guide for service provider FUP leads	7	4	1	1	4
Interview guide for PCWA administrator and FUP liaison ..	16	8	1	1	8
Interview guide for PHA administrator and FUP liaison	16	8	1	1	8
Focus group guide for youth	96	48	1	1.5	72
Administrative data list	24	12	1	5	60
Total					630

Estimated Total Annual Burden Hours: 630.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Title IV–E of the Social Security Act, IV–E § 477(g)(1–2), as amended by the Foster Care Independence Act of 1999.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–21452 Filed 10–1–19; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2014-D-1814]

Bacterial Risk Control Strategies for Blood Collection Establishments and Transfusion Services To Enhance the Safety and Availability of Platelets for Transfusion; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled “Bacterial Risk Control Strategies for Blood Collection Establishments and Transfusion Services to Enhance the Safety and Availability of Platelets for Transfusion; Guidance for Industry.” The guidance document provides blood collection establishments and transfusion services with recommendations to control the risk of bacterial contamination of room temperature stored platelets intended for transfusion. The recommendations in the guidance apply to all platelet products stored at room temperature in plasma or additive solutions, including platelets manufactured by automated methods (apheresis platelets), and Whole Blood derived (WBD) single and pooled (pre-storage and post-storage) platelets. Additionally, the guidance provides licensed blood establishments with recommendations on how to report implementation of manufacturing and labeling changes. The guidance announced in this notice finalizes the draft guidance of the same title dated December 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on October 2, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2014-D-1814 for “bacterial risk control strategies for blood collection establishments and transfusion services to enhance the safety and availability of platelets for transfusion.” 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 guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled “Bacterial Risk Control Strategies for Blood Collection Establishments and Transfusion Services to Enhance the Safety and Availability of Platelets for Transfusion; Guidance for Industry.” The guidance document provides blood collection establishments and transfusion services with recommendations to control the risk of bacterial contamination of room temperature stored platelets intended for transfusion. The recommendations in the guidance apply to all platelet

products stored at room temperature in plasma or additive solutions, including platelets manufactured by automated methods (apheresis platelets), and WBD single and pooled (pre-storage and post-storage) platelets. Additionally, the guidance provides licensed blood establishments with recommendations on how to report implementation of manufacturing and labeling changes.

Room temperature stored platelets are associated with a higher risk of sepsis and related fatality than any other transfusable blood component. The risk of bacterial contamination of platelets is a leading risk of infection from blood transfusion, and this risk has persisted despite the implementation of numerous interventions, including a commonly used method of a single culture test after collection of the platelets.

FDA has established regulations to address the control of bacterial contamination of platelets. Under 21 CFR 606.145(a), blood establishments and transfusion services must assure that the risk of bacterial contamination of platelets is adequately controlled using FDA approved or cleared devices, or other adequate and appropriate methods found acceptable for this purpose by FDA. The guidance provides recommendations to control the risk of bacterial contamination of platelets with 5-day and 7-day dating, including bacterial testing strategies (using culture-based and rapid bacterial detection devices) and the implementation of pathogen reduction devices. In the **Federal Register** of December 6, 2018 (83 FR 62872), FDA announced the availability of the revised draft guidance of the same title dated December 2018. FDA received numerous comments on the draft guidance, including comments on the potential impact of the recommendations on platelet availability, and those comments were considered as the guidance was finalized. In response to comments, the final guidance provides recommendations for additional culture-based testing strategies for apheresis platelets and pre-storage pools of WBD platelets and revised recommendations for testing single unit and post-storage pools of WBD platelets. In addition, revisions were made to clarify recommendations related to labeling, dating periods, inventory management, and culture incubation periods. The guidance announced in this notice finalizes the draft guidance dated December 2018.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The guidance represents the current thinking of FDA on bacterial risk control strategies for blood collection establishments and transfusion services to enhance the safety and availability of platelets for transfusion. 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 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 parts 601 and 610 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR part 606 have been approved under OMB control number 0910–0116; and the collections of information in 21 CFR part 607 have been approved under OMB control number 0910–0052.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances> or <https://www.regulations.gov>.

Dated: September 25, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–21228 Filed 10–1–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0573]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Blood Products Advisory Committee (BPAC). The general function of the committee is to provide advice and recommendations to the Agency on

FDA's regulatory issues related to blood and products derived from blood. The committee will discuss scientific considerations for cold stored platelet products intended for transfusion. The meeting will be open to the public.

DATES: The meeting will be held on November 22, 2019, from 8:30 a.m. to 4:45 p.m.

ADDRESSES: Tommy Douglas Conference Center, 10000 New Hampshire Ave., Silver Spring, MD 20993. Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>. Information about the Tommy Douglas Conference Center may be accessed at: <https://www.tommydouglascenter.com/>.

For those unable to attend in person, the meeting will also be webcast; please see the following link for webcast and other meeting information: <https://www.fda.gov/advisory-committees/blood-products-advisory-committee/2019-meeting-materials-blood-products-advisory-committee>.

FOR FURTHER INFORMATION CONTACT:

Christina Vert or Joanne Lipkind, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6268, Silver Spring, MD 20993–0002, 240–402–8054, christina.vert@fda.hhs.gov, or 240–402–8106, joanne.lipkind@fda.hhs.gov, respectively, 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 November 22, 2019, the BPAC will meet in open session to discuss scientific considerations for cold stored platelet products intended for transfusion, including product characterization, duration of storage and clinical indications for use. The committee will hear presentations on available characterization and

functional studies of cold stored platelets, clinical studies, and the potential role of cold stored platelets in clinical care in military and civilian patient populations. The committee will also discuss the clinical studies needed to support the indications for use of cold stored platelet products stored beyond 3 days.

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. For those unable to attend in person, the meeting will also be webcast; please see the following link for webcast and other meeting information: <https://www.fda.gov/advisory-committees/blood-products-advisory-committee/2019-meeting-materials-blood-products-advisory-committee>.

Procedure: On November 22, 2019, from 8:30 a.m. to 4:45 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 November 13, 2019. Oral presentations from the public will be scheduled between approximately 2:35 p.m. and 3:35 p.m. 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 November 4, 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 November 5, 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 Christina Vert (see **FOR FURTHER INFORMATION CONTACT**) 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: September 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-21399 Filed 10-1-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Charter Renewal for the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, HHS is hereby giving notice that the Advisory Committee on Infant Mortality (ACIM or the Committee) has been renewed.

DATES: The effective date of the charter renewal is September 30, 2019.

FOR FURTHER INFORMATION CONTACT: David S. de la Cruz, Ph.D., MPH, Designated Federal Official (DFO), HRSA, Maternal and Child Health Bureau, 5600 Fishers Lane, 18N25, Rockville, Maryland 20857; 301-443-0543; or dcruz@hrsa.gov.

SUPPLEMENTARY INFORMATION: ACIM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92-463, as amended, (5 U.S.C. App. 2), which sets forth standards for the formation and use of Advisory Committees. ACIM advises the Secretary of HHS on department activities and programs directed at reducing infant mortality and improving the health status of pregnant women and infants. ACIM

represents a public-private partnership at the highest level to provide guidance and focus attention on the policies and resources required to address the reduction of infant mortality and the improvement of the health status of pregnant women and infants. With a focus on life course, the Committee also addresses disparities in maternal health to improve maternal health outcomes, including preventing and reducing maternal mortality and severe maternal morbidity. The Committee also provides advice on how best to coordinate the myriad of federal, state, local, and private programs and efforts that are designed to deal with the health and social problems impacting infant mortality and maternal health.

The charter renewal for ACIM was approved on September 30, 2019, which also stands as the filing date. Renewal of the ACIM charter gives authorization for the Committee to operate until September 30, 2021. A copy of the ACIM charter is available on the ACIM website at <https://www.hrsa.gov/advisory-committees/infant-mortality/index.html>. A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is <http://www.facadatabase.gov/>.

Maria G. Button,

Executive Secretariat.

[FR Doc. 2019-21439 Filed 10-1-19; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Performance Review Board Members

Title 5, U.S.C. Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95-454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**.

The following persons may be named to serve on the Performance Review Boards from 2019 to 2021, which oversee the evaluation of performance appraisals and compensation for Senior Executive Service, Senior Level/Senior Technical, and Title 42 executive equivalent members of the Department of Health and Human Services.

Last name	First name
AGNEW	ANN
ALEXANDER	THOMAS
ALVAREZ	JUAN CARLOS
AMES	KAREN

Last name	First name	Last name	First name
AMIN	STACY	MORSE	SARA
ANTHONY	ELISE	MOTSIOPOULOS	CHRISTOS
ARBES	SARAH	MOUGHALIAN	JENNIFER
ARMSTRONG	REBEKAH	MURPHY	PATRICK
ARNOLD	SHARON	NAIMON	DAVID
ARRIETA	JOSE	NOLAN	JANET
BARRON	PAMELA	NOONAN	TIMOTHY
BARRY	DANIEL	NOVY	STEVEN
BELL	THOMAS	OWENS	ARNE
BENOR	DAVID	PARKER	JAMES
BERGER	DANIEL	PEREZ	LUIS
BHARGAVA	DEEPAK	PERSON	LISA
BIRD	CATHERINE	PETILLO	JOHN
BLACKWELL	EDITH	PETTI	DANA
BOWMAN	MATTHEW	PHILLIPS	SALLY
BRADY	WILLIAM	PIERCE	JULIA
BRATCHER-BOW- MAN.	NIKKI	POSNACK	STEVEN
BROWN	MARK	RICE	GAREY
BUREL	WILLIAM	ROBINSON	WILMA
BURNSZYNSKI	JENNIFER	ROHALL	ANNE
BUSH	LAINA	ROSKEY	COLIN
CASH	LESTER	ROWELL	SCOTT
CHAMBERS	GEORGE	ROYCE	SHANNON
CHANG	WILLIAM	RUCKER	DONALD
CLEARY	KELLY	SAMPLE	ALLEN
COCHRAN	NORRIS	SAUNDERS	MICHAEL
CONLEY	MARY	SCHUHAM	AARON
CORDOVA	JON	SEVERINO	ROGER
CORMIER	JUSTIN	SHUY	BRYAN
CRONIN	KELLY	SIGOUNAS	GEORGE
CULPEPPER	MICHAEL	SIMCOX	EDWIN
DASHER	DAVID	SIMPSON	TODD
DAVIS	MICHELLE	SKEADAS	CHRISTOS
DELEW	NANCY	STANNARD	PAULA
DESTRO	BRENDA	STEELE	DANIELLE
DORN	ALAN	STIMSON	BRIAN
DUNCAN	JAMES	TOBIAS	CONSTANCE
FINK	DOROTHY	TRUEMAN	LAURA
FISCHMANN	ELIZABETH	VITEK	STEVEN
FISHER	BARBARA	VOGEL	TRACI
FOLEY	DEBORAH	WALKER	JANET
FROHBOESE	ROBINSUE	WEBER	EDWIN
GABRIEL	EDWARD	WILLIAMS	MARK
GOULDING	MICHAEL	WRIGHT	RASHEED
GRAHAM	JOHN	WYNNE	DONALD
GREENE	JONATHAN		MARGARET
GRIGSBY	GLENN		
HALL	WILLIAM		
HALL	RANDALL		
HARRISON	BRIAN		
HASELTINE	AMY		
HECHT	JONAH		
HOCKER	JULIE		
HOFFMAN	JANICE		
HOFFMAN	DARRELL		
HORN	DAVID		
JONES	CHRISTINE		
JONES	WANDA		
KAPPELER	EVELYN		
KECKLER	CHARLES		
KERR	LAWRENCE		
KOCHER	PAULA		
KRETSCHMAIER	A MICHON		
LAZARE	MARY		
LEIDER	BRENNA		
LEWIS	TERESA		
LYONS	SUSAN		
MANGO	PAUL		
MCCABE	WILLIAM		
MCDANIEL	EILEEN		
MCMLLEN	CHERYL		
MILNE	KEVIN		
MORAN	THOMAS		

Dated: September 27, 2019.

Diane C. Williamson,

Director, Executive Resources Division.

[FR Doc. 2019-21448 Filed 10-1-19; 8:45 am]

BILLING CODE 4151-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-17-339: Science Education Partnership Awards (SEPA).

Date: October 28-29, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW, Washington, DC 20001.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435-2406, ariasj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 29, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301) 451-6319, rojasr@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Linking Provider Recommendation to Adolescent HPV Uptake.

Date: October 29, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 827-6480, weikts@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Prevention.

Date: October 29, 2019.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435-1211, quadris@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21391 Filed 10–1–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 20–21, 2020.

Open: February 20, 2020, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 20, 2020, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 21, 2020, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301–827–4281, joyce.backus@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: September 26, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21397 Filed 10–1–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

Date: October 17, 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: Nakia C. Brown, Ph.D., Scientific Review Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Room 816, Bethesda, MD 20892, 301–827–4905, brownnac@mail.nih.gov.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: October 24–25, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavilion, Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, linh1@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 27, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21461 Filed 10–1–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable materials, 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: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: February 4, 2020.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301-594-4929, irelanc@mail.nih.gov.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 4-5, 2020.

Open: February 4, 2020, 9:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: February 4, 2020, 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: February 5, 2020, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301-594-4929, irelanc@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nlm.nih.gov/od/bor/bor.html, where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at <http://videocast.nih.gov> on February 4-5, 2020.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: September 26, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21392 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: October 29-30, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, NIH, 6701 Rockledge Dr., Room 6214, Bethesda, MD 20892, 301.402.3019, andrew.wolfe@nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: October 30-31, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451.4251, Armaz.aschrafi@nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation,

Plasticity, Regeneration and Rhythmicity Study Section.

Date: October 30-31, 2019.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435-1178, fujii@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict Panel: Population Sciences and Epidemiology.

Date: October 30, 2019.

Time: 9:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-408-9436, fungai.chanetsa@nih.hhs.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-18-744: Clinical Pilot Studies in Kidney Diseases.

Date: October 30, 2019.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Julia Spencer Barthold, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-402-3073, julia.barthold@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

Date: October 30, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301-435-1211, quadris@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21390 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing; Research Notice of 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 Institute of Nursing Research Special Emphasis Panel; Training Grants.

Date: October 15, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research One Democracy Plaza, 6701 Democracy Boulevard Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594-5966, wli@mail.nih.gov.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Clinical Trial Planning Grants.

Date: October 30, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594-5966, wli@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 27, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21462 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Member Conflict Review.

Date: November 14, 2019.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review, Branch Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20892, 301-443-0800, bbuzas@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: February 25, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Rooms A,B,C Bethesda, MD 20892.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20892, 301-443-0800, bbuzas@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: June 3, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Rooms A,B,C, Bethesda, MD 20892.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902 Bethesda, MD 20892, 301-443-0800, bbuzas@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: September 27, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21460 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: October 31–November 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC Downtown, 1199 Vermont Ave. NW, Washington, DC 20005.

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-408-9866, manospa@csr.nih.gov.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: October 31—November 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435-2477, zargerma@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology; Fellowship.

Date: October 31—November 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301-435-0908, lguo@mail.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: October 31—November 1, 2019.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Lord Baltimore, 20 West Baltimore Street, Baltimore, MD 21201.

Contact Person: Christine A. Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, 301-435-0657, christine.piggee@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Signaling, Development and Aging.

Date: October 31, 2019.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301-435-1022, balasundaramd@csr.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844,

93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21393 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Institute on Drug Abuse Special Emphasis Panel; Exploring Epigenomic or Non-Coding RNA Regulation in the Development, Maintenance, or Treatment of Chronic Pain (R61/R33 Clinical Trial Optional).

Date: October 4, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4228, MSC 95509529, 301-827-4471, Bethesda, MD 20892, ramadanir@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Device-Based Treatments for Substance Use Disorders (UG3/UH3) (Clinical Trial Optional).

Date: October 8, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001

Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301-827-5833, ivan.navarro@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; National Drug Early Warning System Coordinating Center (U01 Clinical Trial Optional).

Date: October 21, 2019.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301-402-6020, hiromi.ono@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Rapid Assessment of Drug Abuse: Smart City Tools.

Date: October 24, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse National Institutes of Health, DHHS, 6001 Executive Blvd. Room 4235 MSC 9550, Bethesda, MD 20892-9550, 301-827-5819, gm145a@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Providing Research Education Experiences to Enhance Diversity in the Next Generation of Substance Abuse and Addiction Scientists (R25—Clinical Trials Not Allowed).

Date: October 28, 2019.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301-402-6020, hiromi.ono@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Alcohol

and Other Substance Use Research Education Programs for Health Professionals and NIDA Research Education Program for Clinical Researchers and Clinicians.

Date: October 28, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550 Bethesda, MD 20892, 301-402-6020, hiromi.ono@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploiting Omics Assays to Investigate Molecular Regulation of Persistent HIV in Individuals with Substance Use Disorder (R61/R33 Clinical Trial Optional).

Date: October 31, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4228, MSC 95509529, 301-827-4471, Bethesda, MD 20892, ramadanir@mail.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Digital Health Technologies to Address the Social Determinants of Health in context of Substance Use Disorders (SUD).

Date: November 1, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd. Room 4235 MSC 9550, Bethesda, MD 20892-9550, 301-827-5819, gm145a@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; R13 Conference Grant Review.

Date: December 9-10, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on

Drug Abuse, NIH/DHHS, 6001 Executive Blvd., Rm. 4234, Bethesda, MD 20892, 301-402-7371, yvonne.ferguson@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 27, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21459 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the 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 materials, 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: Biomedical Informatics, Library and Data Sciences Review Committee.

Date: March 5-6, 2020.

Time: March 5, 2020, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt, 1 Metro Center, Bethesda, MD 20814.

Time: March 6, 2020, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892-7968, 301-594-4937, huangz@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 26, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21394 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Institute of Mental Health Special Emphasis Panel; Limited Competition: Continuation of the Center for Genomic Studies on Mental Disorders (U24).

Date: November 7, 2019.

Time: 11:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892-9606, 301-443-1606, charlesvi@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Pathway to Independence Awards (K99/R00).

Date: November 7, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-9734, millerda@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative; Ruth L. Kirschstein NRSA Individual Postdoctoral Fellowship (F32).

Date: November 22, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, NSC 6152B, Bethesda, MD 20892, 301-402-8152, erin.gray@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 26, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-21396 Filed 10-1-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Proposed Project: Notification of Intent To Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opioid Addiction Under 21 U.S.C. 823(g)(2) (OMB No. 0930-0234 and OMB No. 0930-0369)—Revision

The Drug Addiction Treatment Act of 2000 (“DATA,” Pub. L. 106-310)

amended the Controlled Substances Act (21 U.S.C. 823(g)(2)) to permit qualifying practitioners to seek and obtain waivers to prescribe certain approved narcotic treatment drugs for the treatment of opiate addiction. The legislation set eligibility requirements and certification requirements as well as an interagency notification review process for practitioners who seek waivers. To implement these provisions, SAMHSA developed Notification of Intent Forms that facilitate the submission and review of notifications. The forms provide the information necessary to determine whether practitioners meets the qualifications for waivers set forth under the law at the 30-, 100-, and 275-patient limits. This includes the annual reporting requirements for practitioners with waivers for a 275 patient limit. On October 24, 2018, the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act (Pub. L. 115-71) was signed into law. Sections 3201-3202 of the SUPPORT Act made several amendments to the Controlled Substances Act regarding office-based opioid treatment that affords practitioners greater flexibility in the provision of medication-assisted treatment (MAT).

The SUPPORT Act expands the definition of “qualifying other practitioner” enabling Clinical Nurse Specialists, Certified Registered Nurse Anesthetists, and Certified Nurse Midwives (CNSs, CRNAs, and CNMs) to apply for a Drug Addiction Treatment Act of 2000 (DATA) waiver until October 1, 2023. It also allows qualified practitioners (*i.e.*, MDs, DOs, NPs, PAs, CNSs, CRNAs, and CNMs) who are board certified in addiction medicine or addiction psychiatry, -or- practitioners who provide MAT in a qualified practice setting, to start treating up to 100 patients in the first year of MAT practice (as defined in 42 CFR 8.2) with a waiver.

Further, the SUPPORT Act extends the ability to treat up to 275 patients to “qualifying other practitioners” (*i.e.*, NPs, PAs, CNSs, CRNAs, and CNMs) if they have a waiver to treat up to 100 patients for at least one year and provide medication-assisted treatment with covered medications (as such terms are defined under 42 CFR 8.2) in a qualified practice setting as described under 42 CFR 8.615. Finally, the SUPPORT Act also expands how physicians could qualify for a waiver. Under the statute now, physicians can

qualify for a waiver if they have received at least 8 hours of training on treating and managing opiate-dependent patients, as listed in the statute if the physician graduated in good standing from an accredited school of allopathic medicine or osteopathic medicine in the United States during the 5-year period immediately preceding the date on which the physician submits to SAMHSA. In order to expedite the new provisions of the SUPPORT Act, SAMHSA sought and received a Public Health Emergency Paperwork Reduction Act Waiver. Practitioners may use the form for four types of notifications: (a) New Notification to treat up to 30 patients; (b) New Notification, with the intent to immediately facilitate treatment of an individual (one) patient; (c) Second notification of need and intent to treat up to 100 patients; and (d) New notification to treat up to 100 patients. Under “new” notifications, practitioners may make their initial waiver requests to SAMHSA. “Immediate” notifications inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii). The form collects data on the following items: Practitioner name; state medical license number; medical specialty; and DEA registration number; address of primary practice location, telephone and fax numbers; email address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification: new, immediate, or renewal; certification of qualifying criteria for treatment and management of opiate dependent patients; certification of capacity to provide directly or refer patients for appropriate counseling and other appropriate ancillary services; certification of maximum patient load, certification to use only those drug products that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations, and permits practitioners to expressly consent to disclose limited information to the SAMHSA Buprenorphine Physician and Behavioral Health Treatment Services locators. The following table summarizes the estimated annual burden for the use of this form.

42 CFR citation	Purpose of submission	Estimated number of respondents	Responses/respondent	Burden/response (hr.)	Total burden (hrs.)
	Notification of Intent	1,500	1	0.083	125
	Notification to Prescribe Immediately	50	1	0.083	4
	Notice to Treat up to 100 patients	500	1	0.04	20
	Notice to Treat up to 275 patients	800	1	1	65
Subtotal .....	.....	2,850	.....	.....	214

Burden Associated with the Final Rule That Increased the Patient Limit

8.620 (a)–(c)	Request for Patient Limit Increase *	517	1	0.5	259
	Request for Patient Limit Increase *	517	1	0.5	259
	Request for Patient Limit Increase *	517	1	0.5	259
8.64	Renewal Request for a Patient Limit Increase *	260	1	0.5	130
	Renewal Request for a Patient Limit Increase *	260	1	0.5	130
	Renewal Request for a Patient Limit Increase *	260	1	0.5	130
8.655	Request for a Temporary Patient Increase for an Emergency *	10	1	3	30
	Request for a Temporary Patient Increase for an Emergency *	10	1	3	30
	Request for a Temporary Patient Increase for an Emergency *	10	1	3	30
Subtotal .....	.....	2,361	.....	.....	1,256

New Burden Associated with the Final Rule That Outlined the Reporting Requirements

8.635	Practitioner Reporting Form *	1,350	1	3	4,050
	“Qualifying Other Practitioner” under 21 U.S.C. 823(g)(2)—Nurse Practitioners.	816	1	0.066	54
	“Qualifying Other Practitioner” under 21 U.S.C. 823(g)(2)—Physician Assistants.	590	1	0.066	39
	“Qualifying Other Practitioner” under 21 U.S.C. 823(g)(2)—Certified Nurse Specialists.	590	1	0.066	39
	“Qualifying Other Practitioner” under 21 U.S.C. 823(g)(2)—Certified Nurse Mid-Wives.	590	1	0.066	39
	“Qualifying Other Practitioner” under 21 U.S.C. 823(g)(2)—Certified Registered Nurse Anesthetists.	590	1	0.066	39
Sub Total .....	.....	4,526	.....	.....	4,260
Total Burden .....	.....	6,561	.....	.....	5,519

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, OR email a copy to summer.king@samhsa.hhs.gov. Written comments should be received by December 2, 2019.

Summer King,
Statistician.

[FR Doc. 2019–21388 Filed 10–1–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA

Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Proposed Project: Confidentiality of Alcohol and Drug Abuse Patient Records—(OMB No. 0930–0092)—Extension

Statute (42 U.S.C. 290dd–2) and regulations (42 CFR part 2) require federally conducted, regulated, or directly or indirectly assisted alcohol and drug abuse programs to keep

alcohol and drug abuse patient records confidential. Information requirements are (1) written disclosure to patients about Federal laws and regulations that protect the confidentiality of each patient, and (2) documenting “medical personnel” status of recipients of a disclosure to meet a medical emergency. Annual burden estimates for these requirements are summarized in the

table below. A notice of proposed rulemaking was published in the **Federal Register** on August 26, 2019. <https://www.govinfo.gov/app/details/FR-2019-08-26/2019-17817>.

The final rule will likely not be published prior to the expiration of this current PRA package which is why this extension of the current rule is necessary.

ANNUALIZED BURDEN ESTIMATES

	Annual number of respondents ¹	Responses per respondent	Total responses	Hours per response	Total hour burden
Disclosure: 42 CFR 2.22	11,779	163	² 1,920,844	.20	384,169
Recordkeeping: 42 CFR 2.51	11,779	2	23,558	.167	3,934
Total	11,779	.....	1,944,402	.....	388,103

¹ The number of publicly funded alcohol and drug facilities from SAMHSA’s 2017 National Survey of Substance Abuse Treatment Services (N-SSATS).

² The average number of annual treatment admissions from SAMHSA’s 2015–2017 Treatment Episode Data Set (TEDS).

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to summer.king@samhsa.hhs.gov. Written comments should be received by December 2, 2019.

Summer King,
Statistician.

[FR Doc. 2019–21387 Filed 10–1–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning October 1, 2019, the interest rates for overpayments will be 4 percent

for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of October 1, 2019.

FOR FURTHER INFORMATION CONTACT:

Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective

for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2019–21, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2019, and ending on December 31, 2019. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties are remaining the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning January 1, 2020, and ending on March 31, 2020.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1-1-99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	123119	5	5	4

Dated: September 23, 2019.

Samuel D. Grable,

Chief Financial Officer, U.S. Customs and Border Protection.

[FR Doc. 2019-21377 Filed 10-1-19; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Pipeline Corporate Security Review

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0056, abstracted below to OMB for review and approval of an extension of the

currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection encompasses interviews and site visits with pipeline owner/operators regarding company security planning and plan implementation.

DATES: Send your comments by November 1, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to dhsdeskofficer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email TSAPRA@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on July 3, 2019, 84 FR 31895.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Pipeline Corporate Security Review (PCSR).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652-0056.

Forms(s): Pipeline Corporate Security Review (PCSR) Protocol Form.

Affected Public: Hazardous Liquids and Natural Gas Pipeline Industry.

Abstract: Under the Aviation and Transportation Security Act (ATSA)¹ and delegated authority from the Secretary of Homeland Security, TSA is tasked with developing policies, strategies, and plans for dealing with transportation security. To carry out this responsibility regarding pipelines, TSA assesses current industry security practices through its PCSR program. The PCSR is a voluntary, face-to-face visit with a pipeline owner/operator during which TSA discusses an owner/operator's corporate security planning and the entries made by the owner/operator on the PCSR Form. The PCSR Form includes 210 questions concerning the owner/operator's corporate level security planning, covering security topics such as physical and cyber security, vulnerability assessments, training, and emergency communications. TSA uses the information collected during the PCSR process to determine baseline security standards, potential areas of security vulnerability, and industry "smart" practices throughout the pipeline mode.

Number of Respondents: 20 respondents annually.

Estimated Annual Burden Hours: 180-220 hours annually.

Dated: September 26, 2019.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2019-21375 Filed 10-1-19; 8:45 am]

BILLING CODE 9110-05-P

¹ Public Law 107-71 (115 Stat. 597; Nov. 19, 2001), codified at 49 U.S.C. 114.

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Baseline Assessment for Security Enhancement (BASE) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0062, abstracted below to OMB for review and approval of an extension to the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection allows TSA to conduct transportation security-related assessments during site visits with surface transportation security and operating officials.

DATES: Send your comments by November 1, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to dhsdeskofficer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email TSAPRA@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on April 20, 2019, 84 FR 16686.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and

approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Baseline Assessment for Security Enhancement (BASE) Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652-0062.

Form(s): Baseline Assessment for Security Enhancement (BASE) electronic checklist.

Affected Public: Highway transportation asset owners and operators, and public transportation agencies, including mass transit bus, rail transit, long-distance passenger rail, and other, less common types of service (cable cars, inclined planes, funiculars, and automated guideway systems).

Abstract: TSA's BASE program works with existing (and new) transportation owner/operators to identify the current security posture, identify security gaps, and encourage implementation of countermeasures throughout the surface mode of transportation by asking established questions with transportation asset owners and operators. Data and results collected through the BASE program will inform TSA's policy and program initiatives and allow TSA to provide focused resources and tools to enhance the overall security posture within these sectors of the surface transportation community.

Number of Respondents: 165.¹

¹ Since the publication of the 60-day notice, TSA has adjusted the number of respondents from 170 to 165 and the annual burden hours from 1,458 to 1,275.

Estimated Annual Burden Hours: 1,275 hours annually.

Dated: September 26, 2019.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2019-21370 Filed 10-1-19; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0015]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Immigrant Petition for Alien Workers

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 1, 2019. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615-0015 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529-2140,

Telephone number (202) 272-8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 24, 2019, at 84 FR 29539, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2007-0018 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-140; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit; Not-for-profit institutions. The information collected on this form will be used by USCIS to determine eligibility for the requested immigration benefits under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-140 is 143,000 and the estimated hour burden per response is 1.083 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 154,917 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$62,598,250.

Dated: September 27, 2019.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019-21417 Filed 10-1-19; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0048]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for Premium Processing Service

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated

burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 2, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0048 in the body of the letter, the agency name and Docket ID USCIS-2006-0025. 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 USCIS-2006-0025;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529-2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529-2140, telephone number 202-272-8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2006-0025 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is

offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-907; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households. USCIS uses the data collected through this form to process a request for premium processing. The form serves the purpose of standardizing requests for premium processing, and will ensure that basic information required to assess eligibility is provided by the employers/petitioners.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-907 is 319,301 and the estimated hour burden per response is 0.58 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 185,195 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$79,426,124.

Dated: September 26, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2019-21413 Filed 10-1-19; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2019-N077;
FXES1114080000-190-FF08EVEN00]

Los Osos Habitat Conservation Plan; Environmental Assessment and Receipt of Application; Community of Los Osos, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from the County of San Luis Obispo for an incidental take permit under the Endangered Species Act of 1973, as amended. The permit, if issued, would authorize take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) and Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) and provide assurances for the federally endangered Indian Knob mountainbalm (*Eriodictyon altissimum*) and federally threatened Morro manzanita (*Arctostaphylos morroensis*). We invite public comment on the draft habitat conservation plan and a draft environmental assessment prepared in accordance with the National Environmental Policy Act of 1969, as amended.

DATES: We will receive public comments on the draft habitat conservation plan and draft environmental assessment until November 18, 2019.

ADDRESSES:

Obtaining Documents: You may download a copy of the draft HCP and draft EA at <http://www.fws.gov/ventura/> or you may request copies of the documents by U.S. mail (below) or by phone (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Comments: Please send your written comments using one of the following methods:

- *U.S. Mail:* Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

- *Email:* julie_vanderwier@fws.gov.

FOR FURTHER INFORMATION CONTACT:

Leilani Takano, Assistant Field Supervisor, by phone at 805-677-3330, via the Federal Relay Service at 1-800-877-8339 for TTY assistance, or at the Ventura address (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: The County of San Luis Obispo (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant is requesting an ITP with a 25-year term, for incidental take of two animal species likely to result from implementation of activities covered by the applicant's habitat conservation plan (HCP), and seeking assurances for two plant species. The permit, if issued, would authorize take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) and Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) and provide assurances for the federally endangered Indian Knob mountainbalm (*Eriodictyon altissimum*) and federally threatened Morro manzanita (*Arctostaphylos morroensis*). Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), we advise the public of the availability of the proposed HCP and our draft environmental assessment (EA).

Background

Section 9 of the ESA prohibits the take of fish or wildlife species listed as endangered; by regulation, the Service may extend the take prohibition to fish or wildlife species listed as threatened. "Take" is defined under the ESA to include the following activities: "[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. The ESA defines "incidental take" as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. Under the ESA, protections for federally listed

plants differ from the protections afforded to federally listed animals. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The Permittee would receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)) regarding conservation activities for the Morro shoulderband snail, Morro Bay kangaroo rat, Indian Knob mountainbalm, and Morro manzanita.

The proposed HCP includes measures intended to avoid, minimize, and mitigate take of the Morro shoulderband snail and Morro Bay kangaroo rat and impacts to Indian Knob mountainbalm and Morro manzanita (covered species) expected to occur incidental to otherwise lawful covered activities.

The applicant is requesting coverage for incidental take and impacts resulting from the following categories of covered activities:

1. Private development (new construction, remodels, defensible space),
2. Capital improvement projects,
3. Facilities operation and maintenance projects,
4. Community wildfire protection plan, and
5. Conservation program.

Incidental take or impacts to the covered species resulting from the covered activities would be restricted to the 3,200-acre (ac) permit area, which includes the majority of Los Osos, an unincorporated community in western San Luis Obispo County. The permit area excludes all existing State park lands, with the exception of approximately 5 ac contiguous with Elfin Forest Reserve. Covered activities could result in the loss of up to 532 ac of habitat for the covered species present within the permit area.

The proposed conservation program includes species-specific avoidance and minimization measures and the establishment of a preserve system for the covered species. The preserve system would be subject to monitoring, management, and protection in perpetuity. The conservation program would remain in step with take/impacts, and the assembly of the preserve system would occur throughout the permit term.

National Environmental Policy Act Compliance

The EA analyzes the effects to the human environment for three project alternatives: No action, proposed action, and reduced take.

Under the No-Action alternative, the Service would not issue the ITP and

there would be no implementation of the HCP. Operation and maintenance of existing infrastructure facilities would continue, as long as take of Morro shoulderband snail and Morro Bay kangaroo rat would not result from these activities. Any new development, including private development and capital improvement projects, with the potential to result in take of either animal species would need to seek authorization on an individual basis.

Under the Proposed Action alternative, the Service would issue the ITP and the County would implement the HCP that addresses the covered species and covered activities. The maximum extent of area affected would be 532 ac within the permit area.

Under the Reduced Take alternative, the Service would issue the ITP and the County would implement the HCP that addresses the proposed covered species and covered activities. While the permit area and permit term would remain the same, the maximum area affected would be 266 ac, which represents 50 percent of the maximum amount under the Proposed Action alternative. There would be a commensurate reduction in conservation actions.

Public Review

If you wish to comment on the draft HCP and draft EA, you may submit comments by one of the methods in **ADDRESSES**.

Any comments we receive will become part of the decision record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2019-21339 Filed 10-1-19; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076-0136]

Agency Information Collection Activities; Indian Self-Determination and Education Assistance Act Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 2, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Ms. Sunshine Jordan, Acting Division Chief, Office of Indian Services—Division of Self-Determination, 1849 C Street NW, MS 4513-MIB, Washington, DC 20240, telephone: (202) 513-7616; email: Sunshine.Jordan@bia.gov.

Please reference OMB Control Number 1076-0136 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Sunshine Jordan by telephone at: (202) 513-7616; or by email at: Sunshine.Jordan@bia.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA

minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Indian Self-Determination and Education Assistance Act (ISDEAA) authorizes and directs the Bureau of Indian Affairs (BIA) to contract or compact with and fund Indian Tribes and Tribal organizations that choose to take over the operation of programs, services, functions and activities (PSFAs) that would otherwise be operated by the BIA. These PSFAs include programs such as law enforcement, social services, and tribal priority allocation programs. The contracts and compacts provide the funding that the BIA would have otherwise used for its direct operation of the programs had they not been contracted or compacted by the Tribe, as authorized by 25 U.S.C. 450 *et seq.*

Congressional appropriations are divided among BIA and Tribes and Tribal organizations to pay for both the BIA's direct operation of programs and for the operation of programs by Tribes and Tribal organizations through Self-Determination contracts and compacts. The regulations implementing ISDEAA are at 25 CFR 900.

The data is maintained by BIA's Office of Indian Services, Division of Self-Determination. The burden hours for this continued collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

Title of Collection: Indian Self-Determination and Education Assistance Act Programs.

OMB Control Number: 1076-0136.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes, Tribal organizations and contractors.

Total Estimated Number of Annual Respondents: 567.

Total Estimated Number of Annual Responses: 7,063.

Estimated Completion Time per Response: Varies from 4 hours to 122 hours.

Total Estimated Number of Annual Burden Hours: 127,127 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–21424 Filed 10–1–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAK001030/
A0A501010.999900 253G; OMB Control
Number 1076–0186]

Agency Information Collection Activities; Indian Child Welfare Act (ICWA) Proceedings in State Court

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 2, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Mrs. Evangeline M. Campbell, 1849 C Street NW, Mail Stop 3645, Washington, DC 20240; fax: (202) 513–208–5113; email: Evangeline.Campbell@bia.gov. Please reference OMB Control Number 1076–0186 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mrs. Evangeline M. Campbell, (202) 513–7621.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork

Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Indian Child Welfare Act (ICWA or Act), 25 U.S.C. 1901 *et seq.*, imposes certain requirements for child custody proceedings that occur in State court when a child is an “Indian child.” The regulations, primarily located in Subpart I of 25 CFR 23, provide procedural guidance for implementing ICWA, which necessarily involves information collections to determine whether the child is Indian, provide notice to the Tribe and parents or Indian custodians, and maintain records. The information collections are conducted during a civil action (*i.e.*, a child custody proceeding). While these civil actions occur in State court, and the U.S. is not a party to the civil action, the civil action is subject to the Federal statutory requirements of ICWA, which the Secretary of the Interior oversees under the Act and general authority to manage Indian affairs under 25 U.S.C. 2 and 9.

Title of Collection: Indian Child Welfare Act (ICWA) Proceedings in State.

OMB Control Number: 1076–0186.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households and State/Tribal governments.

Total Estimated Number of Annual Respondents: 7,556.

Total Estimated Number of Annual Responses: 98,069.

Estimated Completion Time per Response: Varies from 15 minutes to 12 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 301,811.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: \$309,630.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–21423 Filed 10–1–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DOI–2019–0007; BLM–19X.LLW0240000.
L10500000.PC0000.LXSIPALE0000]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to create the Department of the Interior Privacy Act system of records titled, “INTERIOR/DOI–20, Paleontological Resources Preservation System.” This system of records helps the Department of the Interior implement the Paleontological Resources Preservation Act and manage, preserve and protect paleontological resources on Federal lands under the jurisdiction of the Department of the Interior. This newly established system will be included in the Department of the Interior's inventory of record systems.

DATES: This new system will be effective upon publication. New routine uses will be effective November 1, 2019. Submit comments on or before November 1, 2019.

ADDRESSES: You may send comments, identified by docket number [DOI–2019–0007], by any of the following methods:

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

- *Email:* DOI_Privacy@ios.doi.gov. Include docket number [DOI–2019–0007] in the subject line of the message.

- *Mail:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

- *Hand Delivery/Courier:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, email at DOI_Privacy@ios.doi.gov or by telephone at (202) 208–1605.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI) is creating a new system of records titled INTERIOR/DOI–20, Paleontological Resources Preservation System to implement the Paleontological Resources Preservation Act of 2009 (PRPA), which requires DOI to issue implementing regulations to manage, protect, and preserve paleontological resources on Federal lands under the jurisdiction of DOI using scientific principles and expertise. In compliance with PRPA, DOI's Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), National Park Service (NPS), and U.S. Fish and Wildlife Service (FWS) are promulgating a joint regulation for the collection of paleontological resources from the lands administered by these bureaus and are responsible for collaborating on the management of these resources. A Notice of Proposed Rulemaking was published in the

Federal Register on December 7, 2016 at 81 FR 88173 to provide notice to the public and allow comment on the proposed rule for the management, collection, and curation of paleontological resources from federal lands using scientific principles and expertise, including collection in accordance with permits; curation in an approved repository; and maintenance of confidentiality of specific locality data. A final rule implementing the DOI regulations will appear at 43 CFR part 49, Paleontological Resources Preservation. BLM, Reclamation, NPS and FWS have developed a standardized application for paleontological resources use permits. Paleontological resources are fossils or fossilized remains, traces, or imprints of organisms preserved in or on the Earth's crust that are of paleontological interest and that provide information about the history of life on earth as defined by the PRPA. The INTERIOR/DOI–20, Paleontological Resources Preservation System, system of records will assist the bureaus in managing, tracking, and reporting activities under permits, ensuring permitted activities do not interfere with management objectives for the land or with other authorized public uses; and protecting Federal land and the natural and cultural resources on that land. Sections 6306 and 6307 of the PRPA, which may be found at 16 U.S.C. 470 470aaa–5 and 470aaa–6, respectively, contain criminal and civil penalties for persons who commit prohibited acts or for violations involving paleontological resources under the PRPA and other law enforcement authorities. Any reported or suspected violation of the PRPA will be referred to the appropriate Federal, state, or local law enforcement organization for investigation and appropriate action, and any records of such investigations will not be maintained in this system. DOI records related to criminal investigations for prohibited acts or violations involving paleontological resources under the PRPA will be maintained in other law enforcement systems of records as appropriate and will not be part of this system of records. However, records relating to civil penalties assessed under the PRPA may be maintained in this system of records and other DOI systems of records as necessary to implement the provisions of the PRPA.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and

disseminate individuals' personal information. The Privacy Act applies to records about individuals that are maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The new INTERIOR/DOI–20, Paleontological Resources Preservation System, system of records is published in its entirety below. NPS has a current system of records titled, Special Use Permits—Interior, NPS–1, which is supplemented by this system of records, INTERIOR/DOI–20, Paleontological Resources Preservation System. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware that your entire comment including your personal identifying information, such as your address, phone number, email address, or any other personal identifying information in your comment, may be made publicly available at any time. While you may request to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/DOI–20, Paleontological Resources Preservation System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) Office of the Bureau of Land Management National Paleontologist, WO–240, 20 M Street SE, Suite 2134, Washington, DC 20003.

(2) Bureau of Reclamation, Denver Federal Center, 6th & Kipling, Building 67, Denver, CO 80225.

(3) National Park Service, 1849 C Street NW, Mail Stop 2460, Washington, DC 20240.

(4) U.S. Fish & Wildlife Service Headquarters Office, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041.

(5) Regional and field offices for each bureau or office responsible for issuing and administering paleontological use permits.

SYSTEM MANAGER(S):

(1) Bureau of Land Management System Manager, National Paleontologist, WO-240, 20 M Street SE, Suite 2134, Washington, DC 20003.

(2) Bureau of Reclamation System Manager, Federal Preservation Officer, Denver Federal Center, 6th & Kipling, Building 67, Denver, CO 80225.

(3) National Park Service Special Park Uses Program Manager, 1849 C Street NW, Mail Stop 2460, Washington, DC 20240.

(4) U.S. Fish & Wildlife FWS System Manager, Federal Preservation Officer, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Paleontological Resources Preservation Act, 16 U.S.C. 470aaa *et seq.*

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to implement the PRPA, which requires DOI to issue implementation regulations to manage, protect, and preserve paleontological resources on Federal lands under the jurisdiction of DOI using scientific principles and expertise. The primary uses of the records are to provide BLM, Reclamation, NPS, and FWS with information to approve or deny requests for paleontological resources use permits. Additionally, this system of records will facilitate management, tracking, and reporting activities under permits, thus allowing bureau and office staff to ensure that permitted activities do not interfere with management objectives for the land or with other authorized public uses, thereby protecting Federal land and the natural and cultural resources on that land.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include members of the public who apply for paleontological resources use permits; permittees and persons working under a permit (support personnel); persons who file a written

objection to a proposed notice of violation and assessment of civil penalty and/or request a hearing on a final assessment of civil penalty; DOI employees, contractors, or partners who perform paleontological investigations for scientific research; employees located at a facility that curate Federal collections; and DOI employees who serve as contacts for processing applications and managing permits.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains paleontological resources use permit applications; documents associated with the bureau or office decision on a permit; documents associated with the management of the permits, including records of appeals of bureau or office decisions; and other records necessary to manage the permitting process and permit-related bureau or office administrative records. The system also contains information on permit numbers, locations of the paleontological site, locality numbers, types, and purposes of the proposed activity, reports of results of permitted activities, and locations and transfers of collections made under a permit. These records may contain the following information: Names of applicants and support personnel such as other persons who conduct or oversee work under the permit; researchers; applicant institutional affiliation; applicant contact information including work mailing address, work telephone number(s), work fax number, and/or professional email address; field contact information; applicant and support personnel resumes, educational institutions attended and dates of attendance or graduation, applicant institutional affiliation, employment information, machinery or vehicle identifying information as appropriate; proof of insurance as appropriate, and other information necessary to ensure that the applicant can perform the work proposed under the permit. The system may also contain records related to the assessment of civil penalties including written notices of objection to a proposed assessment of civil penalty, written requests for a hearing on a final assessment of civil penalty, final determinations, and any correspondence or record related to the implementation of provisions related to civil penalties under the PRPA.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from individuals covered by the system including applicants for and holders of permits and their support personnel, researchers, DOI employees, DOI

contractors, DOI partners, curators and staff-employed at repositories curating Federal collections.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information maintained in this system may be disclosed to authorized entities outside DOI for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

- (1) DOI or any component of DOI;
- (2) Any other Federal agency appearing before the Office of Hearings and Appeals;
- (3) Any DOI employee or former employee acting in his or her official capacity;
- (4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or
- (5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to

respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A-19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To partners, curators and staff that have physical custody of Federally-owned collections of paleontological resources in furtherance of the care and management of the paleontological collection.

P. To other Federal agencies and non-Federal institutions, partners, scientists, groups, persons, or the general public through the news media, social media applications, and museum exhibits to foster public education and awareness and provide outreach on paleontological resources from bureau-administered lands.

Q. To permitted researchers to share relevant information from the original permit regarding previous scientific investigations on paleontological resources. Information shared with researchers will be limited to name and professional contact information, as well as the nature and location of previous discoveries.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1996 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

PRPA records are managed securely at DOI and bureau offices. Paper records are contained in file folders stored in locked file cabinets at secured DOI and bureau facilities. Electronic records are maintained as restricted access in shared or removable drives, computers, email, and electronic databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual's name (permittees or researchers), permit number, locality number, location of the paleontological site, and other types of information by key word search.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained in accordance with specific bureau records retention schedules that have been approved by NARA. Bureau of Reclamation records are maintained under PRM-10.00 Museum Property, Artwork, and Artifacts—Permanent, ENV-3.00 Cultural Resources—Permanent, and Natural Resource Protection and Management Program—Permanent. Bureau of Land Management records are maintained under BLM 4/14 Grazing and other Land-Use Lease and Permit Files—Temporary, 30 years. Fish and Wildlife Service records are maintained under PERM-811, Archaeological Permit Files—Temporary, 3 years. The National Park Service records are maintained under NPS Records Schedule, Resource Management and Lands (Item 1D) (N1-79-08-1)—Temporary, Destroy/delete 3 years after closure.

A new Department Records Schedule (DRS)—2 Mission Bucket Schedule for mission-related records has been submitted to NARA and is pending approval. Once NARA approves the DRS the records related to this system will be maintained in accordance with the following DRS: 2.1.1.03, Long-Term Mission—Natural & Cultural Resources, Native American Graves Protection and Repatriation Act (NAGPRA) & Paleontology; and DRS 2.1.1.04, Historically-Significant Natural & Cultural Resources—NAGPRA & Paleontology. Records under DRS 2.1.1.03 have a temporary disposition authority and are maintained for approximately 25 years after cut-off. Approved destruction methods for temporary records that have met their retention period include shredding or pulping paper records, and erasing or degaussing electronic records in accordance with 384 Departmental Manual 1 and NARA guidelines. Records maintained under DRS 2.1.1.04 have a permanent retention schedule. Permanent records are maintained either at the office of record or transferred to the Federal Records Center or NARA when volume warrants.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. Records are accessible only by authorized DOI employees, and other Federal Government agencies and contractors who have contractual agreements with BLM, Reclamation, NPS, and FWS to conduct activities related to

paleontology. During normal hours of operation, paper records are secured in locked file cabinets under the control of authorized personnel. Computers and servers on which electronic records are stored are located in secured DOI and/or contractor facilities with physical, technical, and administrative levels of security such as access codes, security codes, and security guards, to prevent unauthorized access to the DOI network and information assets. Access to DOI networks and data requires a valid username and password and is limited to DOI personnel and/or contractors who have a need to know the information for the performance of their official duties. Access to contractor's networks and data requires restricted access limited to authorized personnel.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974 as amended, 5 U.S.C. 552a; the Paperwork Reduction Act of 1995, Public Law 104–13; Federal Information Security Modernization Act of 2014, Public Law 113–283, as codified at 44 U.S.C. 3551 *et seq.*; and the Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, network system security monitoring, and software controls. System administrators and authorized personnel are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the appropriate System Manager identified in this notice. The request must include the specific bureau or office that maintains the records to facilitate location of the applicable records. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR ACCESS." A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the appropriate System Manager identified in this notice. The request must include the

specific bureau or office that maintains the records to facilitate location of the applicable records. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the appropriate System Manager identified in this notice. The request must include the specific bureau or office that maintains the records to facilitate location of the applicable records. The request envelope and letter should both be clearly marked "PRIVACY ACT INQUIRY." A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2019–21378 Filed 10–1–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1206 (Review)]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on April 1, 2019 (84 FR 12282) and determined on July 5, 2019 that it would conduct an expedited review (84 FR 39862, August 12, 2019).

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioners Randolph J. Stayin and Amy A. Karpel did not participate.

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on September 26, 2019. The views of the Commission are contained in USITC Publication 4971 (September 2019), entitled *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Investigation No. 731–TA–1206 (Review)*.

By order of the Commission.

Issued: September 26, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21345 Filed 10–1–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Lithium-Ion Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Products Containing the Same, DN 3413*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and 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 United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be

obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of LG Chem, Ltd.; LG Chem Michigan Inc.; and Toray Industries, Inc. on September 26, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithium-ion battery cells, battery modules, battery packs, components thereof, and products containing the same. The complaint names as respondents: SK Innovation Co., Ltd. of South Korea; and SK Battery America, Inc. of Atlanta, GA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3413") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of

the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 27, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-21418 Filed 10-1-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1177]

Certain Semiconductor Devices, Products Containing the Same, and Components Thereof (II); Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 26, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Globalfoundries U.S. Inc. of Santa Clara, California. Supplements were filed on September 12, 2019 and September 16, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, products containing the same, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,823,178 ("the '178 patent"); U.S. Patent No. 9,105,643 ("the '643 patent"); U.S. Patent No. 7,378,357 ("the '357 patent"); and U.S. Patent No. 9,082,877 ("the '877 patent"). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 25, 2019, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5 of the ’178 patent; claims 1–12 of the ’643 patent; claims 1–17 of the ’357 patent; and claims 1–14 of the ’877 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “(a) TSMC semiconductor devices manufactured at the 16 nanometer (nm) and smaller

technology nodes; (b) products containing such TSMC-manufactured 16 nm and smaller semiconductor devices, consisting of smartphones, tablets, computers, wearable devices, set top boxes, and switches (consisting of standalone switches and switches that are incorporated into routers); and (c) components thereof, consisting of integrated circuits and graphics cards containing such semiconductor devices;”

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:
Globalfoundries U.S. Inc., 2600 Great America Way, Santa Clara, CA 95054.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Taiwan Semiconductor Manufacturing Co., Ltd., No. 8, Li-Hsin Road VI, Hsinchu Science Park, Hsinchu 300–78, Taiwan

TSMC North America, 2851 Junction Avenue, San Jose, CA 95134

TSMC Technology, Inc., 2851 Junction Avenue, San Jose, CA 95134

Broadcom Inc., 1320 Ridder Park Drive, San Jose, CA 95131

Broadcom Corporation, 1320 Ridder Park Drive, San Jose, CA 95131

NVIDIA Corporation, 2788 San Tomas Expressway, Santa Clara, CA 95051

Apple Inc., One Apple Park Way, Cupertino, CA 95014

Arista Networks, Inc., 5453 Great America Parkway, Santa Clara, CA 95054

ASUSTeK Computer Inc., No. 15, Li-Te Rd., Beitou District, Taipei 112, Taiwan

Cisco Systems, Inc., 170 West Tasman Drive, San Jose, CA 95134

Lenovo Group Ltd., Shangdi

Information Industry Base, No. 6 Chuang ye Road, Haidian District, Beijing 100085, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 26, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21386 Filed 10–1–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–630 and 731–TA–1462 (Preliminary)]

Glass Containers From China; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–630 and 731–TA–1462 (Preliminary) pursuant to the Tariff Act of 1930 (“the

Act”) to determine whether there is a reasonable indication that 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 glass containers from China, provided for in subheading 7010.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (“Commerce”) extends the time for initiation, the Commission must reach preliminary determinations in antidumping and countervailing duty investigations in 45 days, or in this case by November 12, 2019. The Commission’s views must be transmitted to Commerce within five business days thereafter, or by November 19, 2019.

DATES: September 25, 2019.

FOR FURTHER INFORMATION CONTACT:

Christopher W. Robinson ((202) 205–2542), 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:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on September 25, 2019, by the American Glass Packaging Coalition, Tampa, Florida and Chicago, Illinois.

For further information concerning the conduct of these investigations 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 B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the

Commission’s rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission’s Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 16, 2019, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to preliminaryconferences@usitc.gov (DO NOT FILE ON EDIS) on or before October 11, 2019. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission’s rules, any person may submit to the Commission on or before October 21, 2019, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission’s rules; any submissions

that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the 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.

Certification.—Pursuant to section 207.3 of the Commission’s rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter’s knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission’s rules.

By order of the Commission.

Issued: September 26, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21347 Filed 10–1–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modified Consent Decree Under the Clean Water Act

On September 19, 2019, the Department of Justice lodged a proposed modified consent decree with the

United States District Court for the Western District of Pennsylvania in the lawsuit entitled *United States, Pennsylvania Department of Environmental Protection, and Allegheny County Health Department v. Allegheny County Sanitary Authority* (“Alcosan”), Civil Action No. 2:07-cv-00737.

The proposed modified consent decree would replace a consent decree entered by the court on January 24, 2008, which resolved claims under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311, 1342, that Alcosan violated the Clean Water Act by discharging pollutants into waters of the United States without a permit, and by discharging pollutants in a manner not contemplated by its National Pollutant Discharge Elimination System (“NPDES”) permit. Those violations occurred primarily during wet weather, which causes Alcosan’s sewer system to overload and to discharge through a network of outfalls that run along three main rivers in the area—the Allegheny, Ohio, and Monongahela Rivers. Alcosan paid a civil penalty to the Plaintiffs of \$1.2 million and completed supplemental environmental projects under the 2008 consent decree. The proposed modified consent decree, among other things: (1) Approves a long-term plan under which Alcosan will reduce sewer overflows; (2) extends the time period for Alcosan to implement the long-term plan; and (3) incorporates additional opportunities to modify the long-term plan.

The publication of this notice opens a period for public comment on the proposed modified consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Alcosan*, D.J. Ref. No. 90–5–1–1–4414. All comments must be submitted no later than sixty (60) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed modified consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the

proposed modified consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$74.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is \$28.75.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–21421 Filed 10–1–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Census of Fatal Occupational Injuries

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, “Census of Fatal Occupational Injuries,” 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 November 1, 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=201906-1220-002 (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—BLS, 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 Census of Fatal Occupational Injuries information collection. The Census of Fatal Occupational Injuries provides policymakers and the public with comprehensive, verifiable, and timely measures of fatal work injuries. Data are compiled from various Federal, State, and local sources and include information on how the incident occurred as well as various characteristics of the employers and the deceased worker. This information is used for surveillance of fatal work injuries and for developing prevention strategies. Section 24(a) of the Occupational Safety and Health Act of 1970 authorizes this information collection. See 29 U.S.C. 673(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 1220–0133.

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 November 30, 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 May 28, 2019 (84 FR 24543).

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 1220–0133. 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–BLS.

Title of Collection: Census of Fatal Occupational Injuries.

OMB Control Number: 1220–0133.

Affected Public: Federal government; Individuals or Households; Private sector (Business or other for-profits, Not-for-profit institutions, Farms); State, local, or tribal governments.

Total Estimated Number of Respondents: 1,064.

Total Estimated Number of Responses: 15,604.

Total Estimated Annual Time Burden: 2,808 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 25, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–21379 Filed 10–1–19; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: [19–055]]

Notice of Information Collection: NASA Safety Reporting System (NSRS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—Extension of a currently approved collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Submit all comments on November 1, 2019.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email claire.a.little@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA contractors can voluntarily and anonymously report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Methods of Collection

The current, paper-based reporting system ensures the protection of a submitter's anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.
OMB Number: 2700–0063.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Average Expected Annual Number of Activities: 75.

Average Number of Respondents per Activity: 1.

Annual Responses: 75.

Frequency of Responses: As needed.

Average Minutes per Response: 15 minutes.

Burden Hours: 19.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Nanette Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2019–21382 Filed 10–1–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19–058)]

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a partially-exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant a partially exclusive patent license in the United States to practice the invention described and claimed in U.S. Patent 9,770,405 entitled, “Biocompatible Capsules and Methods of Making,” to Capcell Biologics, Inc. having its principal place of business in New York, NY. The fields of use may be limited to health and medicine. The patent rights in this invention, directed to Health, Medicine, and Biotechnology, have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective partially exclusive license may be granted unless NASA receives written objections, including evidence and argument no

later than October 17, 2019 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than October 17, 2019 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A-4, Moffett Field, CA 94035-1000. (650) 604-0887; Fax (650) 604-2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A-4, Moffett Field, CA 94035-1000. (650) 604-0887; Fax (650) 604-2767.

SUPPLEMENTARY INFORMATION: This Notice of Intent to Grant a Partially-Exclusive Patent License is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially-exclusive patent license will comply with the requirements of 35 U.S.C. 209 and 37 CFR. 404.7.

Information about other NASA inventions available for licensing can be found online at <http://technology.nasa.gov>.

William T. McMurry,
Deputy General Counsel.

[FR Doc. 2019-21395 Filed 10-1-19; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19-059)]

Name of Information Collection: Flight Analog Projects (FAP) Crew Selection Questionnaire

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—New.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Submit all comments on November 1, 2019.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email claire.a.little@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This site contains a questionnaire to become a crew/experiment subject for Flight Analog Project (FAP) missions such as Human Exploration Research Analog (HERA), Scientific International Research in a Unique Station (SIRIUS) and other analog studies. The questionnaire is used to screen potential applicants for initial qualifications. In addition, the website describes the FAP facilities and experiments conducted to inform and promote interest in the FAP missions.

II. Methods of Collection

Public website, Web Form.

III. Data

Title: FAP Crew Application.

OMB Number: 2700-xxxx.

Type of Review: New.

Affected Public: General Public.

Average Expected Annual Number of Activities: 1.

Average Number of Respondents per Activity: 100.

Annual Responses: 100.

Frequency of Responses: 1.

Average Minutes per Response: 15 minutes.

Burden Hours: 25.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Nanette Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2019-21383 Filed 10-1-19; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Privacy Act of 1974; System of Records

AGENCY: Institute of Museum and Library Services (IMLS).

ACTION: Notice of modified systems of records.

SUMMARY: The Institute of Museum and Library Services (IMLS), is publishing an amendment of its systems of records to reflect the agency's change of address and to provide updated information. The Notice includes descriptions of the agency's systems of records and the ways they are maintained, as required by the Privacy Act of 1974, 5 U.S.C. 552 (a)(e)(4).

DATES: The amended system notice is effective upon date of publication.

ADDRESSES: Nancy E. Weiss, Senior Agency Official for Privacy, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024. Email: nweiss@imls.gov. Telephone: (202) 653-4657.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, (202) 653-4657, nweiss@imls.gov.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), IMLS today is publishing an amended notice of the existence and character of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information regarding these systems.

Statement of General Routine Uses

The following general routine uses are incorporated by reference into each system of records set forth herein, unless specifically limited in the system description.

1. A record may be disclosed as a routine use to a Member of Congress or his or her staff, when the Member of Congress or his or her staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the subject individual for employment purposes (including the hiring or retention of any employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefits by the requesting agency) to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. In the event that a record in a system of records maintained by IMLS indicates, either by itself or in combination with other information in IMLS's possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule, or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall be deemed to authorize: (1) Any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (2) Such other interagency referrals as may be necessary to carry out the receiving agencies' assigned law enforcement duties.

4. The names, Social Security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, as follows:

(a) For use in the Federal Parent Locator System (FPLS) and the Federal Tax Offset System for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193);

(b) For release to the Social Security Administration for the purpose of verifying Social Security numbers in connection with the operation of FPLS; and

(c) For release to the U.S. Department of the Treasury (Treasury) for the purpose of payroll, savings bonds, and other deductions; administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986); and verifying a claim with respect to employment on a tax return, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193);

5. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate, or administrative tribunal of appropriate jurisdiction, and such disclosure may include disclosures to opposing counsel in the course of settlement negotiations.

6. Information from any system of records may be used as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information also may be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

7. A record may be disclosed as a routine use to a contractor, expert, or consultant of IMLS (or an office within IMLS) when the purpose of the release is to perform a survey, audit, or other review of IMLS's procedures and operations.

8. A record from any system of records may be disclosed as a routine use to the National Archives and Records Administration as part of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

9. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the government's best interest.

10. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the recipient has incurred indebtedness to the government through its receipt of government funds, and the release of the record is for the purpose of allowing the

debtor to effect a collection against a third party.

11. Information in a system of records may be disclosed as a routine use to the Treasury; other Federal agencies; "consumer reporting agencies" (as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)); or private collection contractors for the purpose of collecting a debt owed to the Federal Government as provided in the regulations promulgated by IMLS at 45 CFR 1183.

Table of Contents

This document gives notice that the following IMLS systems of records are in effect:

IMLS-1 Electronic Grant Management System
 IMLS-3 Federal Personnel and Payroll System
 IMLS-4 Financial Management System—Delphi

IMLS-1

SYSTEM NAME:

Electronic Grant Management System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024. Authorized personnel may access IMLS's electronic grant management system (eGMS) via an online portal.

SYSTEM MANAGER(S):

Deputy Directors of the Office of Museum Services and Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2018 (20 U.S.C. 9101 *et seq.*)

PURPOSE(S) OF THE SYSTEM:

To provide a central repository for information about expert reviewers, grant applicants, award recipients, and awards.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied to or have served as peer review panelists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals, home and work addresses, telephone numbers, email addresses, Social Security Numbers (only from those panelists receiving

payment from IMLS), identification numbers assigned by IMLS, review group assignments, and other data concerning potential and actual reviewers, including area of expertise, institutional affiliations, peer reviewer notes and application grading, payment and/or travel reimbursement information, grant application materials, and written communication with IMLS.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the selection of reviewers and payment of honoraria to panelists, and general administration of the grant review process (evaluation of applications for federal assistance, management of active grants, communication with grantees, and processing of disbursement of grant funds). See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in an electronic database and digital file repository.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name, email address, eGMS identification number, review group assignment, or by the identification number of an application.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are updated on a continuing basis when reviewers are assigned to a review group and as new information is received. Records will be removed only in accordance with the disposition authority provided by IMLS records schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in this system by IMLS staff is controlled by password and dual factor authentication, with different levels of modification rights assigned to individuals and offices at IMLS based upon their specific job functions. Access limited to authorized personnel whose duties require such access, and to those functions necessary for the performance of their duties. IMLS provides grant applicants and peer review panelists individual

accounts with access restricted to only those grant applications with which the individual is affiliated.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

NOTIFICATION PROCEDURES:

See 45 CFR part 1182.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 1796.

IMLS-3

SYSTEM NAME:

Federal Personnel and Payroll System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024, U.S. Department of Interior, Interior Business Center, Denver, Colorado.

SYSTEM MANAGER(S):

Human Resources Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2018 (20 U.S.C. 9101 *et seq.*); Federal Personnel Manual and Treasury Fiscal Requirements Manual.

PURPOSE(S) OF THE SYSTEM:

To document IMLS's personnel processes and to calculate and process payroll.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of IMLS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and personnel information, such as time and attendance data, statements of earnings and leave, training data, wage and tax statements, and payroll and personnel transactions. This system includes data that also is maintained in IMLS's official personnel folders, which are managed in accordance with Office of Personnel Management (OPM) regulations. The OPM has given notice of its system of records covering official personnel folders in OPM/GOVT-1.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as

well as from IMLS employees involved in the administration of personnel and payroll processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be transmitted to the U.S. Department of Interior, Interior Business Center, U.S. Department of Treasury, and employee-designated financial institutions to affect issuance of paychecks to employees and distributions of pay according to employee directions for authorized purposes. Data in this system also may be used to prepare payroll, meet government recordkeeping and reporting requirements, and retrieve and apply payroll and personnel information as required for agency needs. See also the list of General and Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records in this system are maintained off-site by the Department of Interior, Interior Business Center (IBC). Paper records generated through the NBC are maintained in file cabinets in secured storage areas by the Offices of the Chief Financial Officer and Human Resources after arriving at IMLS. Discipline offices also may use file cabinets in secured storage areas to maintain paper records concerning performance reviews and other personnel actions in their divisions.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name, Social Security number, or date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Human Resources Officer maintains paper records in this system in accordance with the General Services Administration's General Records Schedule 2. Division offices may maintain paper records concerning performance reviews and other personnel actions in their divisions for the duration of an individual's employment with IMLS.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the electronic records in this system is controlled by password on the limited number of IMLS computers that can be used to draw information from the IBC. File cabinets containing the paper records in this system either are kept locked during non-business hours or are located in

rooms that are kept locked during non-business hours.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

NOTIFICATION PROCEDURES:

See 45 CFR part 1182.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 1796.

IMLS-4

SYSTEM NAME:

Financial Management System—Delphi.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Enterprise Services Center, 6500 MacArthur Boulevard, Oklahoma City, OK 73169.

SYSTEM MANAGERS(S):

Office of the Chief Financial Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, 4th Floor, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2018 (20 U.S.C. 9101 *et seq.*)

PURPOSE(S) OF THE SYSTEM:

To provide a central repository of all financial transactions to enable IMLS to meet its statutory reporting requirements to the Office of Management and Budget, the U.S. Department of Treasury, and Congress.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of IMLS, application reviewers, grantees, vendors and other Federal Government organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, telefax number, email address, payment information, including banking information. This system data is maintained in an Oracle Database.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants, travel, and vendor processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the general administration of the grant management process and the IMLS accounting process. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records in this system are maintained off-site by the Department of Transportation's Enterprise Services Center. Associated paper records are also maintained at the Enterprise Services Center. Discipline offices also may use locking file cabinets to maintain paper records concerning financial transactions processed in their divisions.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name and/or purchase order number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this database are maintained and updated on a daily basis as financial transactions are processed. Discipline offices maintain paper files that grow as financial transactions are submitted to the Enterprise Services Center for processing. Records are disposed of in accordance with the General Services Administration's General Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Authorized IMLS staff use passwords via a remote secure VPN to gain access to the database. Rooms containing the records in this system are kept locked during non-working hours.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

NOTIFICATION PROCEDURES:

See 45 CFR part 1182.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 1796.

Dated: September 26, 2019.

Amanda Bakale,

Assistant General Counsel, Institute of Museum and Library Services.

[FR Doc. 2019-21342 Filed 10-1-19; 8:45 am]

BILLING CODE 7036-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Polar Programs (1130).

Date and Time: October 30, 2019; 1:00 p.m.–5:00 p.m., October 31, 2019; 9:00 a.m.–3:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314, Room 2010.

Type of Meeting: Open.

Contact Person: Andrew Backe, National Science Foundation, Room W 7237, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Phone 703-292-2454.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation concerning support for polar research, education, infrastructure and logistics, and related activities.

Agenda

October 30, 2019; 1:00 p.m.–5:00 p.m.

Committee of Visitors (COV) Discussion NSF Response to Polar Research Vessel Requirements Subcommittee Report Advancing Earth System Modeling Navigating the New Arctic (NNA) Update Polar Safety

October 31, 2019; 9:00 a.m.–3:30 p.m.

Polar Advisory Overview Document NSF Response to the Arctic Portfolio Review Enhancing Diversity in the Polar Research Community COV Member Selections Office of Legislative and Public Affairs Media and Legislative Relations Meeting with the NSF COO

Dated: September 26, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019-21348 Filed 10-1-19; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Engineering #1170.

Date and Time: October 23, 2019; 12:30 p.m. to 6:00 p.m., October 24, 2019; 8:30 a.m. to 12:45 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E2030, Alexandria, Virginia 22314.

Type of Meeting: Open.

Contact Person: Evette Rollins, National Science Foundation, 2415 Eisenhower Avenue, Suite C14000, Alexandria, Virginia 22314; Telephone: 703.292.8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Wednesday, October 23, 2019

- Directorate for Engineering Report
- NSF Budget Update
- Reports from Advisory Committee Liaisons
- Science and Security
- Stopping Harassment
- NSB Visioning
- Engineering Visioning Summit and Beyond
- Preparation for Discussion with the Director's Office

Thursday, October 24, 2019

- Division of Chemical, Bioengineering, Environmental and Transport Systems (CBET) Overview
- CBET Committee of Visitors (COV) Report
- Division of Civil, Mechanical and Manufacturing Innovation (CMMI) Overview
- CMMI Committee of Visitors (COV) Report
- Mid-scale Research Infrastructure
- Perspectives from the Director's Office
- Roundtable on Strategic Recommendations for ENG

Dated: September 26, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019-21349 Filed 10-1-19; 8:45 am]

BILLING CODE 7555-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87126; File No. SR-CboeEDGX-2019-049]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule To Adopt a Pricing Structure for EDGX Top Derived Data API Service

September 26, 2019.

I. Introduction

On August 1, 2019, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 amend the EDGX fee schedule to adopt a pricing

structure related to the EDGX Top Derived Data API Service (the "Program"). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 19, 2019.⁴ The Commission received no comment letters regarding the proposed rule change. Under Section 19(b)(3)(C) of the Act,⁵ the Commission is hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule to establish a pricing structure for Distributors⁶ of Derived Data⁷ through an Application Programming Interface ("API"). Currently, the Exchange charges a fee of \$1,500 per month for external distribution of EDGX Top.⁸ In addition, external distributors of EDGX Top are charged a fee of \$4 per month for each Professional User and \$0.10 per month for each Non-Professional User.⁹ The

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 86644 (August 13, 2019), 84 FR 42971 ("Notice").

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ A Distributor of an Exchange market data product is any entity that receives the Exchange market data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party. See EDGX Fee Schedule.

⁷ "Derived Data" is pricing data or other data that (i) is created in whole or in part from Exchange data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange data or used to create other data that is a reasonable facsimile or substitute for Exchange data. See Notice, *supra* note 4, 84 FR at 42971. The Exchange states that Derived Data is primarily purchased for the creation of certain derivative instruments rather than for the trading of U.S. equity securities. See *id.* at 42972.

⁸ EDGX Top is an Exchange proprietary data product that provides top of book quotations and execution information for all equity securities traded on the Exchange. See Notice, *supra* note 4, 84 FR at 42971.

⁹ A "Professional User" of an Exchange market data product is any user other than a Non-Professional User. See EDGX Fee Schedule. A "Non-Professional User" of an Exchange market data product is a natural person or qualifying trust that uses data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt

Exchange currently offers a Derived Data White Label Service¹⁰ that allows Distributors to receive reduced fees when distributing Derived Data taken from EDGX Top. Today, Distributors of Derived Data through an API are liable for the fees normally applicable for the external distribution of EDGX Top, as discussed above.

Under the Exchange's proposal, Distributors would be charged a tiered External Subscriber Fee based on the number of API Service Platforms (*i.e.*, "External Subscribers") that receive Derived Data from the Distributor through the Program. As proposed, Distributors would continue to be charged a fee of \$1,500 per month for each External Subscriber if the Distributor makes Derived Data available to 1-5 External Subscribers. Distributors that make Derived Data available to 6-20 External Subscribers would be charged \$1,250 per month for each External Subscriber. Further, Distributors that make Derived Data available to 21 or more External Subscribers would be charged \$1,000 per month for each External Subscriber. Similar to the Derived Data White Label Service, the External Subscriber Fee under the Program would be non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor.¹¹ The Exchange would continue to charge a monthly Professional User fee of \$4 per month for each Professional User that accesses the Program. The Exchange proposes to eliminate the current Non-Professional User fee of \$0.10 per month when participating in the Program.¹²

from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. *Id.*

¹⁰ A White Label Service is a type of hosted display solution in which a Distributor hosts or maintains a website or platform on behalf of a third-party entity. See EDGX Fee Schedule. The service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor. *Id.* The Distributor maintains control of the application's data, entitlements and display. *Id.*

¹¹ For example, a Distributor providing Derived Data based on EDGX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$7,500 (*i.e.*, 6 External Subscribers × \$1,250 each).

¹² The Exchange also proposes consolidate the Derived Data White Label Service and the Program under the common heading "Financial Product Distribution Program."

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹³ at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,¹⁴ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

The Exchange asserts that the proposed fees for the Program are reasonable "as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities."¹⁵

The Exchange also asserts that the proposed fees are "equitable and not unfairly discriminatory because the Exchange will apply the same fees to any similarly situated Distributors that elect to participate in the Program based on the number of External Subscribers provided access to Derived Data through an API Service, with Distributors providing access to six or more External Subscribers receiving a discount compared to the current pricing applicable for external distribution of EDGX Top."¹⁶ Furthermore, the Exchange states that the Program would allow the Exchange to "compete with similar products offered by other national securities exchanges that offer discounted fees to market participants that purchase Derived Data."¹⁷

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.¹⁸ The instructions to Form 19b-4, on which exchanges file their proposed rule

changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."¹⁹

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;²⁰ (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;²¹ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²²

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the establishment of the Program is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²³

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.²⁴

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)²⁵ and 19(b)(2)(B) of the

Act²⁶ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁷ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"²⁸
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"²⁹ and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."³⁰

As noted above, the proposal establishes a new pricing structure for Distributors of Derived Data through an API. The Commission notes that the Exchange's statements in support of the proposed rule change are general in nature and lack detail and specificity. The Exchange states that it operates in a highly competitive environment, and its ability to price top of book data products is constrained by (i) competition among other national securities exchanges, including The Nasdaq Stock Market LLC ("Nasdaq"), that offer similar data products, and pricing options, to their customers; and (ii) the existence of real-time consolidated data disseminated by the securities information processors.³¹ The

Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

¹³ 15 U.S.C. 78s(b)(3)(C).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ See Notice, *supra* note 4, 84 FR at 42973.

¹⁶ *Id.* at 42973.

¹⁷ *Id.* at 42972.

¹⁸ See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

¹⁹ See *id.*

²⁰ 15 U.S.C. 78f(b)(4).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78f(b)(8).

²³ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

²⁴ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change,

²⁶ 15 U.S.C. 78s(b)(2)(B).

²⁷ 15 U.S.C. 78s(b)(2)(B).

²⁸ 15 U.S.C. 78f(b)(4).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78f(b)(8).

³¹ See Notice, *supra* note 4, 84 FR at 42974.

Exchange also states that the proposed pricing structure for Derived Data reduces the cost for market participants to access top of book data that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities.³² However, the Commission notes that the Exchange does not address why the Program is an equitable allocation of reasonable fees other than to state that the proposal would facilitate “cost effective access to market information” that is used to compute pricing for certain derivative instruments.³³ The Exchange does not provide other explanations for why the Program is an equitable allocation of reasonable fees, such as why it is consistent with the Act to charge a greater Distributor fee for the Program than the current Derived Data White Label Service.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”³⁴ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,³⁵ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.³⁶

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.³⁷

V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 23, 2019. Rebuttal comments should be submitted by November 6, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.³⁸

The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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–CboeEDGX–2019–049 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–CboeEDGX–2019–049. 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–CboeEDGX–2019–049 and should be submitted on or before October 23, 2019. Rebuttal comments should be submitted by November 6, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,³⁹ that File No. SR–CboeEDGX–2019–049 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21380 Filed 10–1–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87125; File No. SR–CboeBZX–2019–070]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule To Adopt a Pricing Structure for BZX Top Derived Data API Service

September 26, 2019.

I. Introduction

On August 1, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or

³⁸ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

³⁹ 15 U.S.C. 78s(b)(3)(C).

⁴⁰ 17 CFR 200.30–3(a)(57) and (58).

³² See *id.* at 42973.

³³ See *id.*

³⁴ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³⁵ See *id.*

³⁶ See *id.*

³⁷ See 15 U.S.C. 78f(b)(4), (5), and (8).

“BZX”) 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 amend the BZX fee schedule to adopt a pricing structure related to the BZX Top Derived Data API Service (the “Program”). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 20, 2019.⁴ The Commission received no comment letters regarding the proposed rule change. Under Section 19(b)(3)(C) of the Act,⁵ the Commission is hereby:

(i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule to establish a pricing structure for Distributors⁶ of Derived Data⁷ through an Application Programming Interface (“API”). Currently, the Exchange charges a fee of \$2,500 per month for external distribution of BZX Top.⁸ In addition, external distributors of BZX Top are charged a fee of \$4 per month for each Professional User and \$0.10 per month for each Non-Professional User.⁹ The

Exchange currently offers a Derived Data White Label Service¹⁰ that allows Distributors to receive reduced fees when distributing Derived Data taken from BZX Top. Today, Distributors of Derived Data through an API are liable for the fees normally applicable for the external distribution of BZX Top, as discussed above.

Under the Exchange’s proposal, Distributors would be charged a tiered External Subscriber Fee based on the number of API Service Platforms (*i.e.*, “External Subscribers”) that receive Derived Data from the Distributor through the Program. As proposed, Distributors would continue to be charged a fee of \$2,500 per month for each External Subscriber if the Distributor makes Derived Data available to 1–5 External Subscribers. Distributors that make Derived Data available to 6–20 External Subscribers would be charged \$2,000 per month for each External Subscriber. Further, Distributors that make Derived Data available to 21 or more External Subscribers would be charged \$1,500 per month for each External Subscriber. Similar to the Derived Data White Label Service, the External Subscriber Fee under the Program would be non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor.¹¹ The Exchange would continue to charge a monthly Professional User fee of \$4 per month for each Professional User that accesses the Program. The Exchange proposes to eliminate the current Non-

Professional User fee of \$0.10 per month when participating in the Program.¹²

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹³ at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,¹⁴ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

The Exchange asserts that the proposed fees for the Program are reasonable “as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities.”¹⁵

The Exchange also asserts that the proposed fees are “equitable and not unfairly discriminatory because the Exchange will apply the same fees to any similarly situated Distributors that elect to participate in the Program based on the number of External Subscribers provided access to Derived Data through an API Service, with Distributors providing access to six or more External Subscribers receiving a discount compared to the current pricing applicable for external distribution of BZX Top.”¹⁶ Furthermore, the Exchange states that the Program would allow the Exchange to “compete with similar products offered by other national securities exchanges that offer discounted fees to market participants that purchase Derived Data.”¹⁷

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange’s present proposal, they are required to provide a statement supporting the proposal’s basis under the Act and the rules and regulations thereunder

¹² The Exchange also proposes consolidate the Derived Data White Label Service and the Program under the common heading “Financial Product Distribution Program.”

¹³ 15 U.S.C. 78s(b)(3)(C).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ See Notice, *supra* note 4, 84 FR at 43239.

¹⁶ *Id.* at 43239.

¹⁷ *Id.* at 43238.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 86671 (August 14, 2019), 84 FR 43237 (“Notice”).

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ A Distributor of an Exchange market data product is any entity that receives the Exchange market data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party. See BZX Fee Schedule.

⁷ “Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange data or used to create other data that is a reasonable facsimile or substitute for Exchange data. See Notice, *supra* note 4, 84 FR at 43237. The Exchange states that Derived Data is primarily purchased for the creation of certain derivative instruments rather than for the trading of U.S. equity securities. See *id.* at 43239.

⁸ BZX Top is an Exchange proprietary data product that provides top of book quotations and execution information for all equity securities traded on the Exchange. See Notice, *supra* note 4, 84 FR at 43237.

⁹ A “Professional User” of an Exchange market data product is any user other than a Non-Professional User. See BZX Fee Schedule. A “Non-Professional User” of an Exchange market data product is a natural person or qualifying trust that uses data only for personal purposes and not for any commercial purpose and, for a natural person

who works in the United States, is not: (i) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. *Id.*

¹⁰ A White Label Service is a type of hosted display solution in which a Distributor hosts or maintains a website or platform on behalf of a third-party entity. See BZX Fee Schedule. The service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor. *Id.* The Distributor maintains control of the application’s data, entitlements and display. *Id.*

¹¹ For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$12,000 (*i.e.*, 6 External Subscribers × \$2,000 each).

applicable to the exchange.¹⁸ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.”¹⁹

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange’s facilities;²⁰ (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;²¹ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²²

In temporarily suspending the Exchange’s fee change, the Commission intends to further consider whether the establishment of the Program is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange’s rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²³

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.²⁴

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)²⁵ and 19(b)(2)(B) of the Act²⁶ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission’s analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁷ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,”²⁸
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to perfect the operation of a free and open market and a national market system” and “protect investors and the public interest,” and not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers,”²⁹ and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”³⁰

As noted above, the proposal establishes a new pricing structure for Distributors of Derived Data through an API. The Commission notes that the Exchange’s statements in support of the proposed rule change are general in nature and lack detail and specificity. The Exchange states that it operates in a highly competitive environment, and its ability to price top of book data products is constrained by (i) competition among other national securities exchanges, including The

Nasdaq Stock Market LLC (“Nasdaq”), that offer similar data products, and pricing options, to their customers; and (ii) the existence of real-time consolidated data disseminated by the securities information processors.³¹ The Exchange also states that the proposed pricing structure for Derived Data reduces the cost for market participants to access top of book data that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities.³² However, the Commission notes that the Exchange does not address why the Program is an equitable allocation of reasonable fees other than to state that the proposal would facilitate “cost effective access to market information” that is used to compute pricing for certain derivative instruments.³³ The Exchange does not provide other explanations for why the Program is an equitable allocation of reasonable fees, such as why it is consistent with the Act to charge a greater Distributor fee for the Program than the current Derived Data White Label Service.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”³⁴ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,³⁵ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.³⁶

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly

¹⁸ See 17 CFR 240.19b-4 (Item 3 entitled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change”).

¹⁹ See *id.*

²⁰ 15 U.S.C. 78f(b)(4).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78f(b)(8).

²³ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

²⁴ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

²⁶ 15 U.S.C. 78s(b)(2)(B).

²⁷ 15 U.S.C. 78s(b)(2)(B).

²⁸ 15 U.S.C. 78f(b)(4).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78f(b)(8).

³¹ See Notice, *supra* note 4, 84 FR at 43238.

³² See *id.* at 43240.

³³ See *id.* at 43238.

³⁴ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³⁵ See *id.*

³⁶ See *id.*

discriminatory; or not impose an unnecessary or inappropriate burden on competition.³⁷

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 23, 2019. Rebuttal comments should be submitted by November 6, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³⁸

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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-2019-070 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-2017-070. 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-2019-070 and should be submitted on or before October 23, 2019. Rebuttal comments should be submitted by November 6, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,³⁹ that File No. SR-CboeBZX-2019-070 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-21381 Filed 10-1-19; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16141 and #16142; ILLINOIS Disaster Number IL-00056]

Administrative Declaration of a Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 09/26/2019.

³⁹ 15 U.S.C. 78s(b)(3)(C).

⁴⁰ 17 CFR 200.30-3(a)(57) and (58).

Incident: Severe Storms and Flooding.
Incident Period: 06/26/2019 through 06/28/2019.

DATES: Issued on 09/26/2019.

Physical Loan Application Deadline Date: 11/25/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 06/26/2020.

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: Cook, Will.

Contiguous Counties:

Illinois: Dupage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry.

Indiana: Lake.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
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
<i>For Economic Injury:</i>	
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 16141 6 and for economic injury is 16142 0. The States which received an EIDL Declaration # are Illinois, Indiana.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,
Acting Administrator.

[FR Doc. 2019-21402 Filed 10-1-19; 8:45 am]

BILLING CODE 8026-03-P

³⁷ See 15 U.S.C. 78f(b)(4), (5), and (8).

³⁸ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

DEPARTMENT OF STATE

[Public Notice: 10910]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1:00 p.m. until 4:00 p.m. on Thursday, October 23, in New York, New York, at the United States Mission to the United Nations, 799 United Nations Plaza. Assistant Secretary of State for Economic and Business Affairs Manisha Singh and Committee Chair Paul R. Charron will host the meeting. The ACIEP serves the U.S. government in a solely advisory capacity and provides advice concerning topics in international economic policy. The discussion at the meeting will include such topics as U.S. companies competing overseas and the purpose of a corporation. The Sanctions Subcommittee may present updates.

This meeting is open to the public, though seating is limited. Entry to the building is controlled. To obtain pre-clearance for entry, members of the public planning to attend must, no later than October 16, 2019, provide their full name and professional affiliation (if any) to Briana Wagner by email: WagnerBF@state.gov. Requests for reasonable accommodation should also be made to Briana Wagner by October 16, 2019. Requests made after that date will be considered but may not be possible to fulfill.

This information is being collected pursuant to 22 U.S.C. 2651a and 22 U.S.C. 4802 for the purpose of screening and pre-clearing participants to enter the host venue at the U.S. Department of State, in line with standard security procedures for events of this size. The Department of State will use this information consistent with the routine uses set forth in the System of Records Notices for Protocol Records (State-33) and Security Records (State-36). See <https://www.state.gov/privacy/sorns/index.htm>. Provision of this information is voluntary, but failure to provide accurate information may impede your ability to register for the event.

For additional information, contact Briana Wagner, Bureau of Economic and Business Affairs, at (202) 647-4732, or WagnerBF@state.gov.

Briana Wagner,*Designated Federal Officer, Department of State.*

[FR Doc. 2019-21333 Filed 10-1-19; 8:45 am]

BILLING CODE 4710-AE-P

DEPARTMENT OF STATE

[Public Notice: 10907]

Notice of Receipt of Request From the Government of the Republic of Turkey Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.

ACTION: Notice of receipt of request.

SUMMARY: Notice of receipt of request from Turkey for cultural property protection.

FOR FURTHER INFORMATION CONTACT:

Andrew Cohen, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202-632-6301; culprop@state.gov.

SUPPLEMENTARY INFORMATION: The Government of the Republic of Turkey has made a request to the Government of the United States under Article 9 of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. The United States Department of State received this request on September 6, 2019. Turkey's request seeks U.S. import restrictions on archaeological and ethnological material representing Turkey's cultural patrimony. Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), notification of the request is hereby published. A public summary of Turkey's request and information about U.S. implementation of the 1970 UNESCO Convention will be available at the Cultural Heritage Center website: <http://culturalheritage.state.gov>.

Marie Therese Porter Royce,*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2019-21359 Filed 10-1-19; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 10906]

Notice of Receipt of Request From the Republic of Yemen Government Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.

ACTION: Notice of receipt of request.

SUMMARY: Notice of receipt of request from Yemen for cultural property protection.

FOR FURTHER INFORMATION CONTACT:

Chelsea Freeland, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202-632-6301; culprop@state.gov.

SUPPLEMENTARY INFORMATION: The Republic of Yemen Government has made a request to the Government of the United States under Article 9 of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. The United States Department of State received this request on September 11, 2019. Yemen's request seeks U.S. import restrictions on archaeological and ethnological material representing Yemen's cultural patrimony. Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), notification of the request is hereby published. A public summary of Yemen's request and information about U.S. implementation of the 1970 UNESCO Convention will be available at the Cultural Heritage Center website: <http://culturalheritage.state.gov>.

Marie Therese Porter Royce,*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2019-21358 Filed 10-1-19; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 10911]

Commission on Unalienable Rights; Notice of Open Meeting

The Commission on Unalienable Rights ("Commission") will meet from 1:15 until 6:15 p.m., on Wednesday, October 23 and from 8:00 a.m. until 12:30 p.m. on Friday, November 1. Both meetings will be in Washington, DC at the State Department. Participants are asked to use the 23rd Street entrance to gain access to each meeting. The meetings will be opened by Secretary of State Michael Pompeo and directed by the Chair of the Commission and Learned Hand Professor of Law at Harvard Law School, Mary Ann Glendon. The Commission serves the U.S. government in a solely advisory capacity, and provides advice concerning principles related to human rights. The discussion at the October 23 meeting will include topics related to human rights and the American founding. The discussion of founding

principles will continue on November 1, with focus on the American rights tradition after World War II.

This meeting is open to the public, though seating is limited. Entry to the building is controlled. To obtain pre-clearance for entry, members of the public planning to attend must, *no later than October 15 for the October 23 meeting, and October 25 for the November 1 meeting*, provide their full name and email address to the RSVP email address at RSVPCommission@state.gov. Non-Department of State attendees should also provide date of birth and identifying data (driver's license or passport number). Requests for reasonable accommodation should be made at the same time as the notification. Late requests will be considered but might not be possible to fulfill.

This information is being collected pursuant to 22 U.S.C. 2651a and 22 U.S.C. 4802 for the purpose of screening and pre-clearing participants to enter the host venue at the U.S. Department of State, in line with standard security procedures for events of this size. The Department of State will use this information consistent with the routine uses set forth in the System of Records Notices for Protocol Records (State-33) and Security Records (State-36). See <https://www.state.gov/privacy/sorns/index.htm>. Provision of this information is voluntary, but failure to provide accurate information may impede your ability to register for the event. Email addresses are collected for purposes of notification should the meeting be postponed or cancelled due to weather or other exigencies.

For additional information, contact Duncan Walker, Policy Planning Staff, at (202) 647-2236, or walkerdh3@state.gov.

Duncan H. Walker,

Designated Federal Officer, Department of State.

[FR Doc. 2019-21334 Filed 10-1-19; 8:45 am]

BILLING CODE 4710-10-P

DEPARTMENT OF STATE

[Public Notice: 10915]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: “Making Marvels: Science and Splendor at the Courts of Europe” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition “Making Marvels: Science and Splendor at the

Courts of Europe,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about November 18, 2019, until on or about March 1, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, 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. 2019-21410 Filed 10-1-19; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 10905]

Cultural Property Advisory Committee

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: We are issuing this notice to announce the location, date, time, and agenda for the next meeting of the Cultural Property Advisory Committee.

DATES: October 29–30, 2019, 9:00 a.m. to 5:00 p.m. (EDT). The Cultural Property Advisory Committee will hold an open session on October 29, 2019, at 1:30 p.m. (EDT). It will last approximately one hour.

Participation: You may participate electronically by Zoom. To participate, visit <http://culturalheritage.state.gov> for information on how to access the meeting. Please submit any request for

reasonable accommodation not later than October 15, 2019, by contacting the Bureau of Educational and Cultural Affairs at culprop@state.gov. It may not be possible to accommodate requests made after that date.

Comments: The Committee will review your written comment if it is received by October 15, 2019, at 11:59 p.m. (EDT). You are not required to submit a written comment in order to make an oral comment in the open session.

ADDRESSES: The public will participate electronically by Zoom. The members will meet at the U.S. Department of State, Annex 5, 2200 C St. NW, Washington, DC.

Written Comments: You may submit written comments in two ways, depending on whether they contain privileged or confidential information:

- **Electronic Comments:** For ordinary comments, please use <http://www.regulations.gov>, enter the docket [DOS-2019-0031] and follow the prompts to submit your comments.

- **Paper Comments:** For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send submissions to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA-5 Floor 5, 2200 C St. NW, Washington, DC 20522-0505.

FOR FURTHER INFORMATION CONTACT: For general questions concerning the meeting, contact Andrew Cohen, Bureau of Educational and Cultural Affairs—Cultural Heritage Center by phone, (202) 632-6301, or email: culprop@state.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (“the Act”), the Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (“the Committee”) (19 U.S.C. 2605(e)(2)). The Act describes the Committee’s responsibilities. A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review the requests by the Government of the Kingdom of Morocco and the Republic of Yemen Government seeking import restrictions on archaeological and ethnological material. The Committee will also undertake a continuing review of the effectiveness of cultural property agreements and emergency actions currently in force.

Open Session Participation: The Committee will hold an open session of the meeting to receive oral public

comments on the Morocco and Yemen requests on Tuesday, October 29, 2019, from 1:30 p.m. to approximately 2:30 p.m. (EDT). We have provided specific instructions on how to participate or observe the open session at <http://culturalheritage.state.gov>. You do not need to register to observe the open session. You do not have to submit written comments to make an oral comment in the open session. But if you do wish to speak, you must request to be scheduled by October 23, 2019, via email (culprop@state.gov) in order to be assigned a slot. Please submit your name and organizational affiliation in this request. The open session will start with a brief presentation by the Committee, after which you should be prepared to answer questions on any written statements you may have submitted. Finally, you may provide additional oral comments for up to five (5) minutes per participant. Due to time constraints, it may not be possible to accommodate all who wish to speak.

Written Comments: If you do not wish to participate in the open session but still wish to make your views known, you may submit written comments for the Committee's consideration. Submit non-privileged and non-confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) regarding the requests from Morocco and Yemen using the Regulations.gov website (listed in the "COMMENTS" section above) not later than October 15, 2019, at 11:59 p.m. (EDT). For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send comments to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA-5 Floor 5, 2200 C St. NW, Washington, DC 20522-0505.

In all cases, your written comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). We request that any party soliciting or aggregating written comments received from other persons for submission to the Department inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed. Written comments submitted in electronic form are not private. We will post the comments at <http://www.regulations.gov>.

Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an

electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)).

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019-21357 Filed 10-1-19; 8:45 am]

BILLING CODE 4710-05-P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on October 31, 2019, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The Commission will also hear testimony on a proposed rulemaking and consumptive use mitigation policy, as well as proposals to amend its Regulatory Program Fee Schedule. Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 5, 2019, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is November 12, 2019.

DATES: The public hearing will convene on October 31, 2019, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is November 12, 2019.

ADDRESSES: The public hearing will be conducted at the Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423; fax: (717) 238-2436.

Information concerning the applications for these projects is available at the Commission's Water Application and Approval Viewer at <https://www.srbc.net/waav>. Additional supporting documents are available to inspect and copy in accordance with the

Commission's Access to Records Policy at www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.

SUPPLEMENTARY INFORMATION: The public hearing will cover a proposed rulemaking and consumptive use mitigation policy, as well as proposed amendments to the Commission's Regulatory Program Fee Schedule as posted on the SRBC Public Hearing web page at <https://www.srbc.net/about/meetings-events/public-hearing.html>. The public hearing will also cover the following projects.

Projects Scheduled for Action

1. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20151201).

2. Project Sponsor and Facility: Chester Water Authority, East Nottingham Township, Chester County, Pa. Application for consumptive use of up to 60.000 mgd (peak day).

3. Project Sponsor and Facility: Town of Cortlandville, Cortland County, N.Y. Application for groundwater withdrawal of up to 1.300 mgd (30-day average) from Lime Hollow Well 2.

4. Project Sponsor and Facility: Town of Cortlandville, Cortland County, N.Y. Application for groundwater withdrawal of up to 1.300 mgd (30-day average) from Lime Hollow Well 7.

5. Project Sponsor and Facility: Town of Cortlandville, Cortland County, N.Y. Application for groundwater withdrawal of up to 1.008 mgd (30-day average) from the Terrace Road Well.

6. Project Sponsor: Graymont (PA) Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Modification to increase consumptive use by an additional 0.098 mgd (30-day average), for a total consumptive use of up to 0.720 mgd (30-day average), and change limits from peak day to 30-day average (Docket No. 20050306).

7. Project Sponsor: Hazleton City Authority. Project Facility: Hazleton Division, Hazle Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.354 mgd (30-day average) from Barnes Run Well 3.

8. Project Sponsor and Facility: Leola Sewer Authority (will be issued to Upper Leacock Township Municipal Authority), Upper Leacock Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.263 mgd (30-day average) from Well 16 (Docket No. 19890702).

9. Project Sponsor and Facility: New Holland Borough Authority, New Holland Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.860 mgd (30-day average) from Well 5.

10. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of consumptive use of up to 2.622 mgd (peak day) (Docket No. 19890106).

11. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN-33 (Docket No. 19890106).

12. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.678 mgd (30-day average) from Well UN-34 (Docket No. 19890106).

13. Project Sponsor and Facility: Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN-35 (Docket No. 19890106).

14. Project Sponsor: Pixelle Specialty Solutions LLC. Project Facility: Spring Grove Mill (Codus Creek—New Filter Plant Intake), Spring Grove Borough, York County, Pa. Applications for consumptive use of up to 3.650 mgd (peak day) and surface water withdrawal of up to 19.800 mgd (peak day).

15. Project Sponsor: Pixelle Specialty Solutions LLC. Project Facility: Spring Grove Mill (Codus Creek—Old Filter Plant Intake), Spring Grove Borough, York County, Pa. Application for surface water withdrawal of up to 6.000 mgd (peak day).

16. Project Sponsor: Pixelle Specialty Solutions LLC. Project Facility: Spring Grove Mill (unnamed tributary to Codorus Creek—Kessler Pond Intake), Spring Grove Borough, York County, Pa. Application for surface water withdrawal of up to 0.750 mgd (peak day).

17. Project Sponsor and Facility: Sugar Hollow Water Services LLC (Susquehanna River), Eaton Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20151204).

18. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water

withdrawal of up to 2.000 mgd (peak day) (Docket No. 20151205).

Projects Scheduled for Action Involving a Diversion

19. Project Sponsor and Facility: City of Aberdeen, Harford County, Md. Modifications to extend the approval term of the consumptive use, surface water withdrawal, and out-of-basin diversion approval (Docket No. 20021210) to allow additional time for evaluation of the continued use of the source for the Aberdeen Proving Ground-Aberdeen Area.

20. Project Sponsor and Facility: Chester Water Authority, East Nottingham Township, Chester County, Pa. Application for an out-of-basin diversion of up to 60.000 mgd (peak day) from the Susquehanna River and Octoraro Reservoir.

21. Project Sponsor and Facility: New York State Canal Corporation (Middle Branch Tioughnioga Creek), Towns of DeRuyter and Cazenovia, Madison County, and Town of Fabius, Onondaga County, N.Y. Applications for surface water withdrawal of up to 4.300 mgd (peak day), consumptive use of up to 4.300 mgd (peak day), and out-of-basin diversion of up to 4.300 mgd (peak day) from Middle Branch Tioughnioga Creek.

22. Project Sponsor: Seneca Resources Company, LLC. Project Facility: Impoundment 1, receiving groundwater from various sources, Sergeant and Norwich Townships, McKean County, Pa. Application for into-basin diversion from the Ohio River Basin of up to 2.517 mgd (peak day) (Docket No. 20141216).

Commission Initiated Project Approval Modifications

23. Project Sponsor and Facility: Bucknell University, East Buffalo Township, Union County, Pa. Conforming the grandfathering amount with the forthcoming determination for a groundwater withdrawal up to 0.046 mgd (30-day average) from Well 2 and up to 0.116 mgd (30-day average) from Well 3 (Docket No. 20021008).

24. Project Sponsor and Facility: Manada Golf Club, Inc., East Hanover Township, Dauphin County, Pa. Conforming the grandfathered amount with the forthcoming determination for a withdrawal of up to 0.071 mgd (30-day average) from the 4th Tee Well, up to 0.036 mgd (30-day average) from the 5th Tee Well, and up to 0.036 mgd (30-day average) from the Barn Well (Docket No. 20020614).

25. Project Sponsor: Pennsylvania Fish & Boat Commission. Project Facility: Pleasant Gap State Fish Hatchery, Benner Township, Centre County, Pa. Conforming the

grandfathering amount with the forthcoming determination for a withdrawal of up to 5.056 mgd (30-day average) from Blue and East Springs, up to 0.930 mgd (30-day average) from Hoy and Shugert Springs, and up to 1.000 mgd (30-day average) from Logan Branch (Docket No. 20000601).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any business listed above required to be subject of a public hearing. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing room will begin at 2:00 p.m. and Commission staff will be available for questions prior to the commencement of the hearing. Guidelines for the public hearing are posted on the Commission's website, www.srbc.net, prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110-1788, or submitted electronically through <https://www.srbc.net/regulatory/public-comment/>. Comments mailed or electronically submitted must be received by the Commission on or before November 12, 2019, to be considered.

Authority: Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: September 27, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019-21403 Filed 10-1-19; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: Effective August 23, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$16 billion as part of the

action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process. The U.S. Trade Representative initiated the exclusion process in September 2018, and stakeholders have submitted requests for the exclusion of specific products. In July and September 2019, the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The U.S. Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of the August 23, 2018 effective date of the \$16 billion action, and will extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact traderemedycbp@dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 37381 (July 31, 2019), and 84 FR 49600 (September 20, 2019).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$16 billion. See 83 FR 40823. The U.S. Trade Representative's

determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$16 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. See 83 FR 47236 (the September 18 notice).

Under the September 18 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the \$16 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requestors had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to "Made in China 2025" or other Chinese industrial programs.

The September 18 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The September 18 notice required submission of requests for exclusion from the \$16 billion action no later than December 18, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In July 2019, the U.S. Trade Representative granted an initial set of exclusion requests. See 84 FR 37381. The U.S. Trade Representative granted a second set of exclusions in September 2019. See 84 FR 49600. The Office of the U.S. Trade Representative regularly updates the status of each pending request and posts the status within the web pages for

the respective tariff action they apply to at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions>.

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the September 18 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in 111 specially prepared product descriptions, which cover 382 separate exclusion requests.

In accordance with the September 18 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the 10-digit HTSUS subheadings and product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(5) are conforming amendments to the HTSUS reflecting the modification made by the Annex.

Paragraph B and C of the Annex correct errors by removing U.S. notes 20(v)(55) and 20(v)(88) of subchapter III of chapter 99 of the HTSUS, as set out in the Annex to the notice published at 84 FR 49600 (September 20, 2019).

As stated in the September 18, 2018 notice, the exclusions will apply as of the August 23, 2018 effective date of the \$16 billion action, and extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

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ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.20 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.88.20	Articles the product of China, as provided for in U.S. note 20(y) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading”		

2. by inserting the following new U.S. note 20(y) to subchapter III of chapter 99 in numerical sequence:

“(y) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.02 and provided for in U.S. notes 20(c) and 20(d) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.02. See 83 Fed. Reg. 40823 (August 16, 2018) and 83 Fed. Reg. 47236 (September 18, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.02 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) Pet urine collection and disposal kits, put up in retail packaging, each comprising seven disposable trays of plastics measuring 8.3 cm in depth, 27.9 cm in length, and 16.5 cm in width, one scoop of plastics and one bottle containing 42 g of absorbent sodium acrylate powder (described in statistical reporting number 3906.90.5000)
- (2) Silicone presented in 210 liter (55 gallon) drums or 1,040 liter (275 gallon) intermediate bulk containers (IBCs) (described in statistical reporting number 3910.00.0000)

- (3) Elastomeric petroleum resins (CAS No. 64742-16-1) (described in statistical reporting number 3911.10.0000)
- (4) Flexible tubes, pipes and hoses, of cross-linked polyethylene (PEX), each measuring 6.1 m in length and having an outside diameter of 9.5 mm or more but not exceeding 28.6 mm (described in statistical reporting number 3917.32.0020)
- (5) Self-adhesive tape, of plastics, in rolls measuring 5.08 cm in width, 30.5 m in length and 0.254 mm in thickness, of a kind used for wrapping and sealing connections between metal pipes and fittings (described in statistical reporting number 3919.10.2055)
- (6) Self-adhesive tape, of polyvinyl chloride, in rolls measuring 1.905 cm in width, 6.706 m in length and 0.18 mm in thickness (described in statistical reporting number 3919.10.2055)
- (7) Self-adhesive film, of clear vinyl, exceeding 20 cm in width, designed for use as shelf liner (described in statistical reporting number 3919.90.5040)
- (8) Thermoformable polyethylene terephthalate (PET) sheets, with a thickness of 0.35 mm or more but not exceeding 1.7 mm, to which PET glitter flakes are permanently fastened, in rolls not less than 250 mm in width and not more than 1,092 mm in length (described in statistical reporting number 3920.62.0090)
- (9) Colored or printed sheets of cellular ethylene vinyl acetate plastics, in rectangles measuring 15 cm or more but not exceeding 31 cm in width, 22 cm or more but not exceeding 46 cm in length and 2 mm or more but not exceeding 6 mm in thickness, or in rolls measuring 91.44 cm in width, 152.4 cm in length, and 2 mm or more but not exceeding 6 mm in thickness (described in statistical reporting number 3921.19.0000)
- (10) Unclad glass core rods of high purity silica with a core region infused with germanium dioxide, in which the ratio of the outer diameter of the rod to the diameter of the core region is less than 5:1, such outer diameter not exceeding 65 mm, and in lengths of less than 3 m (described in statistical reporting number 7002.20.1000)
- (11) Driveway gates and pedestrian gates of galvanized steel (described in statistical reporting number 7308.90.9590)
- (12) Fence panels of galvanized steel (described in statistical reporting number 7308.90.9590)
- (13) Gate posts of iron or steel (described in statistical reporting number 7308.90.9590)

- (14) Gates or pens, of iron or steel (described in statistical reporting number 7308.90.9590)
- (15) Gestation stalls, farrowing crates and rails therefor, gates and structural support posts, the foregoing of steel, of a kind used in swine penning systems (described in statistical reporting number 7308.90.9590)
- (16) Steel chain-link fence panels, each panel wider than 3.5 m but not wider than 4 m and higher than 1.5 m but not higher than 2 m (described in statistical reporting number 7308.90.9590)
- (17) Steel wall assemblies (described in statistical reporting number 7308.90.9590)
- (18) Structural articles of stainless steel (described in statistical reporting number 7308.90.9590)
- (19) Spark ignition internal combustion engines (other than aircraft engines, other than marine propulsion engines, other than reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87, other than to be installed in agricultural or horticultural machinery or equipment and other than natural gas or LP engines), rated 746 W or greater but not exceeding 4,476 W, of a cylinder capacity not exceeding 220 cc (described in statistical reporting number 8407.90.9040)
- (20) Spark ignition internal combustion engines (other than aircraft engines, other than marine propulsion engines, other than reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87, other than to be installed in agricultural or horticultural machinery or equipment and other than natural gas or LP engines), rated 4,476 W or greater but not exceeding 16.50 kW, of a cylinder capacity not exceeding 710 cc (described in statistical reporting number 8407.90.9060)
- (21) Machinery incorporating heat exchangers, valves, pumps, pipes, wiring and instrumentation, designed to change the temperature of gas (described in statistical reporting number 8419.89.9585)
- (22) Mortising machines, each incorporating a work holder that moves on x-y axes, with a power rating not over 375 W (1/2 horsepower) (described in statistical reporting number 8465.95.0065)
- (23) Machine tool stands having leveling, stabilizing, attachment or other special features (described in statistical reporting number 8466.30.8000)
- (24) Radial spherical plain shaft bearings, without housings, of steel (described in statistical reporting number 8483.30.8070)
- (25) Stepper motors, with an output of under 18.65 W, valued not over \$1.20 ea. (described in statistical reporting number 8501.10.2000)

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- (26) AC electric motors, of an output of 18.65 W or more but not exceeding 37.5 W, each with attached actuators (described in statistical reporting number 8501.10.6020)
 - (27) Cylindrical DC electric motors, of an output of 18.65 W or more but not exceeding 37.5 W (described in statistical reporting number 8501.10.6060)
 - (28) Swing-gate openers comprising a DC motor with an output of 18.65 W or more but less than 35 W, each including an AC power transformer, a wireless remote-control, an electric linear actuator and an emergency key for disconnecting the actuator (described in statistical reporting number 8501.10.6060)
 - (29) Electric motors, with an output of 18.65 W or more but not exceeding 37.5 W, with attached cables, designed for use in adjusting motor vehicle seats (described in statistical reporting number 8501.10.6080)
 - (30) Universal AC/DC electric motors, with an output exceeding 74.6 W but not exceeding 735 W each with base metal arms, designed for use in extending or retracting awnings or gates (described in statistical reporting number 8501.20.4000)
 - (31) Universal AC/DC electric motors, with an output exceeding 74.6 W but not exceeding 735 W, each with attached gear and gear rack track (described in statistical reporting number 8501.20.4000)
 - (32) Universal AC/DC electric motors, with an output exceeding 74.6 W but not exceeding 735 W, each with gear attached and chain drive (described in statistical reporting number 8501.20.4000)
 - (33) DC electric motors, 12 V, with an output exceeding 74.6 W but not exceeding 735 W, with lead wires and electrical connector, measuring not over 75 mm outside diameter, with a housing not over 100 mm in length and a shaft not over 60 mm in length (described in statistical reporting number 8501.31.4000)
 - (34) DC electric motors, 12 V, with an output not exceeding 515 W, measuring not over 95 mm in outside diameter, not over 155 mm in length and with a shaft not over 30 mm in length (described in statistical reporting number 8501.31.4000)
 - (35) DC electric motors, 120 V, with an output not exceeding 140 W, measuring not over 45 mm in diameter and not over 100 mm in length (described in statistical reporting number 8501.31.4000)
 - (36) DC electric motors, 120 V, with an output not exceeding 90 W, measuring not over 90 mm long by 35 mm wide by 35 mm high (described in statistical reporting number 8501.31.4000)

- (37) DC electric motors, 13.5 V, with an output not exceeding 110 W, measuring not over 75 mm outside diameter, housing not over 120 mm long, a shaft not over 55 mm long and with a mounting flange not over 150 mm (described in statistical reporting number 8501.31.4000)
- (38) DC electric motors, 230 V, with an output not exceeding 140 W, measuring not more than 45 mm in diameter and not over 100 mm in length (described in statistical reporting number 8501.31.4000)
- (39) DC electric motors, 230 V, with output not exceeding 85 W, measuring not more than 90 mm in length by 35 mm in width by 35 mm in height (described in statistical reporting number 8501.31.4000)
- (40) DC electric motors, 24 V, with an output exceeding 74.6 W but not exceeding 735 W, with mounting plate, lead wires and electrical connector, measuring not over 80 mm outside diameter, housing not over 150 mm in length and shaft not over 95 mm in length (described in statistical reporting number 8501.31.4000)
- (41) DC electric motors, 24 V, with an output not exceeding 105 W, measuring not over 260 mm in length by 205 mm in width by 825 mm in height (described in statistical reporting number 8501.31.4000)
- (42) DC electric motors, 24 V, with an output not exceeding 515 W, measuring not over 95 mm in outside diameter, not over 155 mm in length and with a shaft not over 30 mm in length (described in statistical reporting number 8501.31.4000)
- (43) DC electric motors, with an output exceeding 74.6 W but not exceeding 735 W, containing lead wires and an electrical connector (described in statistical reporting number 8501.31.4000)
- (44) DC electric motors, with an output exceeding 74.6 W but not exceeding 80 W, each with a pinion gear, valued not over \$5 (described in statistical reporting number 8501.31.4000)
- (45) DC motors with a power output exceeding 74.6 W but not exceeding 230 W, measuring less than 105 mm in diameter and 50 mm or more but not over 100 mm in length (described in statistical reporting number 8501.31.4000)
- (46) DC motors, of an output exceeding 74.6 W but not exceeding 735 W, each valued not over \$18 (described in statistical reporting number 8501.31.4000)
- (47) Direct Current (DC) permanent magnet motors rated at 90 W or more but not over 110 W and 24 V with torque of 65 Newton meters (Nm) and 2,035 Nm, incorporating a wheel that can manually actuate a valve (described in statistical reporting number 8501.31.4000)

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- (48) Resin-encapsulated DC permanent magnet brushless motors, with an output of 150 W or more but not exceeding 250 W, designed for use in air conditioning and heat pump systems, measuring 112 mm in diameter and 110 mm or more but not exceeding 122 mm in length (excluding shafts) (described in statistical reporting number 8501.31.4000)
 - (49) Amorphous silicon solar panel kits, each with an output of 100 W or less (described in statistical reporting number 8501.31.8010)
 - (50) Photovoltaic generators of a kind described in statistical note 9 to chapter 85, of an output not exceeding 150 W (described in statistical reporting number 8501.31.8010)
 - (51) End brackets suitable for use solely or principally with generators of heading 8501 (other than generators of statistical reporting number 8501.64.0021) (described in statistical reporting number 8503.00.9550)
 - (52) CB radio antennas (described in statistical reporting number 8529.10.9100)
 - (53) Ground Fault Circuit Interrupters (GFCIs), Appliance Leakage Current Interrupters (ALCIs), Leakage Current Detection Interrupters (LCDIs), and Arc Fault Circuit Interrupters (AFCIs) (described in statistical reporting number 8536.30.8000)
 - (54) Surge protectors of a kind designed to protect a buried-wire pet containment system and its control apparatus, having an energy absorption rating at 120 V of less than 500 joules and 15 A (described in statistical reporting number 8536.30.8000)
 - (55) Electronic AC passive infrared (PIR) motion sensing switches (described in statistical reporting number 8536.50.7000)
 - (56) Fixed set-point pressure switches (described in statistical reporting number 8536.50.7000)
 - (57) Humidity triggered switches (described in statistical reporting number 8536.50.7000)
 - (58) Occupancy and vacancy sensor switches (described in statistical reporting number 8536.50.7000)
 - (59) Retro-reflective infrared beam switches consisting of an infrared LED emitter and detector in a single housing and a reflective disk for mounting at a distance; such emitter-detector units operating at no more than 40 V AC/DC and containing a relay or other switching component to open or close a separate (secondary) circuit (described in statistical reporting number 8536.50.7000)

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- (60) Wall-mountable dimmer switches (described in statistical reporting number 8536.50.7000)
 - (61) Surface-mount glass passivated rectifier diodes, having a rectified output current over 0.5 A but not exceeding 1.25 A (described in statistical reporting number 8541.10.0080)
 - (62) Application specific integrated circuits (ASICs), not containing memories, designed for use in engine control units (ECUs) to interface with linear exhaust gas oxygen sensors (UEGOs) (described in statistical reporting number 8542.31.0001)
 - (63) Electrical control devices which modulate electrical signals, not containing two or more apparatus of 8535 or 8536, each valued over \$60 but not over \$70 (described in statistical reporting number 8543.70.9960)
 - (64) Conductors, for a voltage not exceeding 1,000 V, with 4 unfitted wire connectors and 4 waterproof gel wire splice capsules (described in statistical reporting number 8544.49.2000)
 - (65) Copper wire, twenty (20) gauge, insulated with polyvinylchloride (PVC), not fitted with connectors, for a voltage not exceeding 80 V, not designed for use in telecommunications (described in statistical reporting number 8544.49.2000)
 - (66) Sets comprising conductors and markers for electrically powered dog training, controlling, repelling or locating apparatus (described in statistical reporting number 8544.49.2000)
 - (67) Bottom shelf coupler assemblies designed for use with coupling systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (68) Buffering/cushioning front retainer plates, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (69) Buffering/cushioning intermediate aligning and overtravel protection members, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (70) Buffering/cushioning rear aligning and overtravel protection members designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)

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- (71) Buffering/cushioning rear structural units, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (72) Buffering/cushioning retention and alignment shafts, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (73) Buffering/cushioning retention caps, designed for use with buffering/cushioning systems of freight railcars of heading 8606 (described in statistical reporting number 8607.30.1000)
 - (74) Draft pack rear aligning and overtravel protection members, designed for use with hybrid railcar cushioning systems of freight railcars of heading 8606 (described in statistical reporting number 8607.30.1000)
 - (75) Follower block plates, designed for use with buffering/cushioning systems of freight railcars of heading 8606 (described in statistical reporting number 8607.30.1000)
 - (76) Front draft lugs, designed to stop the movement of buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (77) Rear draft lugs, designed to stop the movement of buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (78) Type F knuckles, designed for use with coupling systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
 - (79) Digital clinical thermometers, valued not over \$11 each (described in statistical reporting number 9025.19.8040)
 - (80) Galileo thermometers (described in statistical reporting number 9025.19.8080)
 - (81) Handheld electronic thermometers, with a metal thermo-couple probe measuring 10 cm in length (described in statistical reporting number 9025.19.8080)
 - (82) Thermometers, not combined with other instruments, other than liquid-filled for direct reading, other than pyrometers, other than clinical thermometers (described in statistical reporting number 9025.19.8080)
 - (83) Battery-powered electronic temperature monitors with LCD displays, capable of storing downloadable readings as low as -80 degrees Celsius or as high as 70 degrees Celsius, of a kind used in cold-temperature transport or storage of perishable goods (described in statistical reporting number 9025.80.1000)

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- (84) Portable, wireless enabled, electrical gas monitors (described in statistical reporting number 9027.10.2000)
 - (85) Multimeters, without a recording device, clamp-style, with 10-function LCD digital display for measuring AC/DC voltage and current, resistance and continuity with an autorange of 400 amps, measuring not over 33 cm (13 inches) high by 51 cm (20 inches) wide by 36 cm (14 inches) deep (described in statistical reporting number 9030.31.0000)
 - (86) Multimeters, without a recording device, capable of measuring more than one property (such as voltage, amperage, continuity, ground fault) of an electric current in a circuit, self-powered or powered by the circuit it is measuring, each valued not over \$16 (described in statistical reporting number 9030.31.0000)
 - (87) Multimeters, without a recording device, clamp-style, 6-function, autoranging 600 ampere AC only, measuring not over 33 cm (13 inches) high by 15.5 cm (6 inches) wide by 18 cm (7 inches) deep (described in statistical reporting number 9030.31.0000)
 - (88) Multimeters, without a recording device, clamp-style, root mean square (RMS) type, for measuring AD/DC voltage, AC/DC current, resistance, capacitance and frequency, with 600 V to 1,000 V safety rating (described in statistical reporting number 9030.31.0000)
 - (89) Multimeters, without a recording device, clamp-style, true root mean square (RMS) type, with 6-function LCD digital display, measuring not over 41 cm high by 33 cm wide by 28 cm deep (described in statistical reporting number 9030.31.0000)
 - (90) Multimeters, without a recording device, clamp-style, with 4-function 8-range manual-ranging analog display, for measuring AC/DC voltage, AC current and resistance, measuring not over 30.5 cm (12 inches) high by 13 cm (5 inches) wide by 20.3 cm (8 inches) deep (described in statistical reporting number 9030.31.0000)
 - (91) Multimeters, without a recording device, hand-held, for measuring AC/DC voltage, AC/DC current, resistance, capacitance and frequency, with 250 to 1,000 AC/DC volt safety rating, designed for examining electrical motors in household appliances and automobiles (described in statistical reporting number 9030.31.0000)
 - (92) Multimeters, without a recording device, hand-held, true root mean square (RMS) type, with 10-function 10-range LCD digital display, for measuring AC/DC voltage, current, resistance, diode, continuity and battery, measuring not over 31 cm high by 21 cm (20.3 cm wide by 12 cm deep (described in statistical reporting number 9030.31.0000)

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- (93) Multimeters, without a recording device, hand-held, with 13-range analog display, measuring not over 28 cm high by 13 cm wide by 20.3 cm deep (described in statistical reporting number 9030.31.0000)
 - (94) Multimeters, without a recording device, hand-held, with 3-function 11-range LCD digital display, manual-ranging, for measuring AC/DC voltage and resistance, measuring not over 23 cm high by 13 cm wide by 26 cm deep (described in statistical reporting number 9030.31.0000)
 - (95) Multimeters, without a recording device, hand-held, with 4-function 14-manual-range LCD digital display, for measuring AC/DC voltage, resistance and battery, measuring not over 15.5 cm high by 28 cm wide by 28 cm deep (described in statistical reporting number 9030.31.0000)
 - (96) Multimeters, without a recording device, hand-held, with 4-function 14-range manual-ranging LCD digital display, for measuring AC/DC voltage, resistance and battery, measuring not over 28 cm high by 15.5 cm wide by 26 cm deep (described in statistical reporting number 9030.31.0000)
 - (97) Multimeters, without a recording device, hand-held, with 4-function 17-range autoranging LCD digital display, for measuring AC/DC voltage, resistance, continuity and diode, measuring not over 20.3 cm high by 8 cm wide by 13 cm deep (described in statistical reporting number 9030.31.0000)
 - (98) Multimeters, without a recording device, hand-held, with 5-function 18-range LCD digital display, with 10 megohm input impedance, for measuring AC/DC voltage, DC current, resistance and diode, measuring not over 13 cm high by 23 cm wide by 23 cm deep (described in statistical subheading 9030.31.0000)
 - (99) Multimeters, without a recording device, hand-held, with 5-function analog display, measuring not over 18 cm high by 13 cm wide by 20.3 cm deep (described in statistical reporting number 9030.31.0000)
 - (100) Multimeters, without a recording device, hand-held, with 5-function, 12-range analog display, measuring not over 13 cm high by 20.3 cm wide by 18 cm deep (described in statistical reporting number 9030.31.0000)
 - (101) Multimeters, without a recording device, hand-held, with 6-function 14-range manual-range analog display, for measuring AC/DC voltage, DC current, resistance, decibels and battery, measuring not over 18 cm high by 13 cm wide by 23 cm deep (described in statistical reporting number 9030.31.0000)
 - (102) Multimeters, without a recording device, hand-held, with 7-function 19-range analog display, for measuring AC/DC voltage, DC current, resistance, continuity, decibel and battery, measuring not over 23 cm high by 64 cm wide by 26 cm deep (described in statistical reporting number 9030.31.0000)

- (103) Multimeters, without a recording device, hand-held, with 7-function 19-range LCD digital display, for measuring AC/DC voltage, resistance, continuity, diode, battery and temperature, measuring not over 26 cm high by 26 cm wide by 15.5 cm deep (described in statistical reporting number 9030.31.0000)
 - (104) Multimeters, without a recording device, hand-held, with 7-function 19-range LCD digital display, measuring not over 33 cm high by 13 cm wide by 13 cm deep (described in statistical reporting number 9030.31.0000)
 - (105) Multimeters, without a recording device, hand-held, with 7-function 7-range autoranging LCD digital display, for measuring AC/DC voltage, resistance, diode, continuity, temperature and battery, measuring not over 28 cm high by 16 cm wide by 26 cm deep (described in statistical reporting number 9030.31.0000)
 - (106) Multimeters, without a recording device, hand-held, with 8-function 28-manual-range LCD digital display, for measuring AC/DC voltage, current, resistance, continuity, diode and battery, measuring not over 28 cm high by 21 cm wide by 21 cm deep (described in statistical reporting number 9030.31.0000)
 - (107) Multimeters, without a recording device, hand-held, with 9-function 10-autorange LCD digital display, for measuring AC/DC voltage, current, resistance, diode and continuity, measuring not over 28 cm high by 21 cm wide by 21 cm deep (described in statistical reporting number 9030.31.0000)
 - (108) Multimeters, without a recording device, hand-held, with autoranging LCD digital display, for measuring AC/DC voltage up to 600 volts, current up to 10 amperes, continuity and resistance, measuring not over 28 cm high by 23 cm wide by 18 cm deep (described in statistical reporting number 9030.31.0000)
 - (109) Multimeters, without a recording device, root mean square (RMS) clamp-style, for measuring AC/DC voltage, AC/DC current, resistance, capacitance and frequency, with 600 V safety rating, designed principally for examining electrical motors in household appliances and automobiles (described in statistical reporting number 9030.31.0000)
 - (110) Multimeters, without recording device, to measure voltage, current, resistance or power (described in statistical reporting number 9030.31.0000)
 - (111) GPS wireless diagnostic tools, each with a recording device, operating at 150 MHz (described in statistical reporting number 9030.84.0000)”
3. by amending the last sentence of the first paragraph of U.S. note 20(c) to subchapter III of chapter 99:

- a. by deleting the word “or” where it appears after “U.S. note 20(o) to subchapter III of chapter 99”; and
 - b. by inserting the phrase “; or (3) heading 9903.88.20 and U.S. note 20(y) to subchapter III of chapter 99” after the phrase “U.S. note 20(v) to subchapter III of chapter 99”.
4. by amending the first sentence of U.S. note 20(d) to subchapter III of chapter 99:
 - a. by deleting the word “or” where it appears after the phrase “ U.S. note 20(o) to subchapter III of chapter 99”; and
 - b. by inserting “or (3) heading 9903.88.20 and U.S. note 20(y) to subchapter III of chapter 99” after “U.S. note 20(v) to subchapter III of chapter 99”.
 5. by amending the Article Description of heading 9903.88.02:
 - a. by deleting “9903.88.12 or”;
 - b. by inserting in lieu thereof “9903.88.12,”; and
 - c. by inserting “or 9903.88.20,” after “9903.88.17,”.
- B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(v)(55) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Structural angles of aluminum, in a V shape with a 90 degree angle, for sliding or rolling driveway gates, in packages containing 2 or 3 angles, with each piece of a length exceeding 1.5 m but not exceeding 2.0 m and a width exceeding 4 cm but not exceeding 8 cm (described in statistical reporting number 7610.90.0080)"
 - C. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(v)(88) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Three-wheeled carriages for disabled persons, with electric power for propulsion, each carriage having a second passenger seat capable of being stowed and a foot-operated brake (described in statistical reporting number 8713.90.0030)"

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

**Notice of Product Exclusions and
Amendments: China's Acts, Policies,
and Practices Related to Technology
Transfer, Intellectual Property, and
Innovation**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions and amendments.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process. The U.S. Trade Representative initiated the exclusion process in July 2018, and stakeholders have submitted requests for the exclusion of specific products. In December 2018, and March, April, May, June, July and September 2019, the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative's determination to grant additional exclusion requests, as specified in the Annex to this notice. The U.S. Trade Representative will continue to issue decisions as necessary. This notice also corrects errors by removing certain notes in the Harmonized Tariff Schedule of the United States.

DATES: The product exclusions announced in this notice will apply as of the July 6, 2018 effective date of the \$34 billion action, and will extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimboll, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation,

including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 21389 (May 14, 2019), 84 FR 25895 (June 4, 2019), 84 FR 32821 (July 9, 2019), and 84 FR 49564 (September 20, 2019).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$34 billion. *See* 83 FR 28710. (\$34 billion action.) The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$34 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

Under the July 11 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the \$34 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to

“Made in China 2025” or other Chinese industrial programs.

The July 11 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the \$34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative would periodically announce decisions. In December 2018, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The U.S. Trade Representative granted additional exclusions in March, April, May, June, July, and September 2019. *See* 84 FR 11152, 84 FR 16310, 84 FR 21389, 84 FR 25895, 84 FR 32821, and 84 FR 49564. The Office of the U.S. Trade Representative regularly updates the status of each pending request and posts the status within the web pages for the respective tariff action they apply to at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions>.

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the July 11 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex to this notice, the exclusions are reflected in 92 specially prepared product descriptions, which cover 129 separate exclusion requests.

In accordance with the July 11 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the 10-digit HTSUS headings and product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(5) are conforming amendments to the HTSUS reflecting the modification made by the Annex to this notice.

Paragraphs B, C, D, and E of the Annex correct errors by removing U.S. notes 20(q)(115), 20(q)(132), 20(q)(133), and 20(q)(216) of subchapter III of chapter 99 of the HTSUS. These notes relate to HTS subheadings covered by other tariff actions, but they were placed

in the annex to the notice published at 84 FR 49564 (September 20, 2019), which excluded products under HTS subheadings covered by the \$34 billion action.

As stated in the July 11 notice, the exclusions will apply as of the July 6, 2018 effective date of the \$34 billion action, and extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue

instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

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ANNEX

- A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
1. by inserting the following new heading 9903.88.19 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.88.19	Articles the product of China, as provided for in U.S. note 20(x) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading”		

2. by inserting the following new U.S. note 20(x) to subchapter III of chapter 99 in numerical sequence:

“(x) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.01 and provided for in U.S. notes 20(a) and 20(b) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.01. See 83 Fed. Reg. 28710 (June 20, 2018) and 83 Fed. Reg. 32181 (July 11, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.01 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) Unlimited rotary acting hydraulic motors, gear type, valued at \$70 or more but not exceeding \$75 each (described in statistical reporting number 8412.29.8015)
- (2) Modules containing three single-stage, single-suction, frame-mounted centrifugal pumps for liquids, with mechanical seals, with discharge outlets under 4 cm in diameter (described in statistical reporting number 8413.70.2022)

- (3) Load limiters for water pumps inserted into start/stop internal combustion engines (described in statistical reporting number 8413.91.1000)
- (4) Stainless steel bushings, having a twelve sided outer surface, designed to fit onto a fuel vapor impeller of a kind used for automotive fuel injectors (described in statistical reporting number 8413.91.1000)
- (5) Steel rings with an external diameter not greater than 18 mm designed for use in air conditioning compressors (described in statistical reporting number 8414.90.4140)
- (6) Quench casings for furnace burners (described in statistical reporting number 8417.90.0000)
- (7) Formed sheet metal guards suitable for attachment to drying rollers in papermaking machinery (described in statistical reporting number 8419.90.2000)
- (8) Chemically etched dies of steel, steel-rule cutting dies, movable magnetic dies, embossing folders and plastic embossing diffusers, of a kind used in manually-powered roller machines for etching or stenciling a single sheet of cardstock, paper, leather, flexible magnet, plastics, metallic foil, vellum, felt or fabric, such sheets measuring not more than 50.8 cm in width or length (described in statistical reporting number 8420.99.9000)
- (9) Water filtering apparatus, each valued not over \$1.50 (described in statistical reporting number 8421.21.0000)
- (10) Liquid treatment process modules designed to separate ethylene dichloride (EDC) from an EDC/water/acid solution, containing an EDC decanter, heat exchangers and pumps, measuring not over 23 meters by 23 meters by 25 meters (described in statistical reporting number 8421.29.0065)
- (11) Chlorine absorption process modules designed to dissolve chlorine gas, produced through the interaction of salt water and hydrochloric acid, in a liquid, measuring not over 35 meters by 23 meters by 26 meters (described in statistical reporting number 8421.39.8040)
- (12) Gas treatment process modules, each containing a methylenediphenyl diamine (MDA) vent scrubber and nitrogen gas stripping column, designed to use aniline to filter MDA from the nitrogen gas stripping column, measuring not over 26 meters by 21 meters by 17 meters (described in statistical reporting number 8421.39.8040)
- (13) Gas treatment process modules, each containing a reactor vent scrubber designed to scrub evaporated phosgenation reaction liquid with chlorobenzene, measuring not over 26 meters by 22 meters by 22 meters (described in statistical reporting number 8421.39.8040)

- (14) Gas treatment process modules, each containing scrubbers and decomposers designed to remove hazardous gases on the surface of packing in packed columns, measuring not over 21 meters by 17 meters by 36 meters (described in statistical reporting number 8421.39.8040)
- (15) Methylene diphenyl diisocyanate (MDI) isomers separation process modules designed to purify MDI gas, measuring not over 24 meters by 21 meters by 22 meters (described in statistical reporting number 8421.39.8040)
- (16) Modules, each consisting of a carbon dioxide (CO₂) stripper and heat exchangers designed to remove CO₂ from solutions to produce 1-Ethyl-3-(3-dimethylaminopropyl) carbodiimide (EDC), measuring not over 20 meters by 20 meters by 17 meters (described in statistical reporting number 8421.39.8040)
- (17) Process modules containing activated carbon absorbers designed to absorb volatile organic compounds, measuring not over 21 meters by 20 meters by 15 meters (described in statistical reporting number 8421.39.8040)
- (18) Thermal oxidizer modules (TO_x) designed to destroy hazardous compounds in water vapors, gases and liquids produced during the ethylene dichloride (EDC) and methylene diphenyl isocyanate (MDI) production processes, containing a combustion chamber and scrubber for conversion of nitrogen oxide (NO_x) to nitrogen (N₂), measuring not over 35 meters by 20 meters by 14 meters (described in statistical reporting number 8421.39.8040)
- (19) Thermal oxidizer modules (TO_x) designed to destroy hazardous compounds in water vapors, gases and liquids produced during the ethylene dichloride (EDC) and methylene diphenyl isocyanate (MDI) production processes, containing a combustion chamber and scrubber for conversion of nitrogen oxide (NO_x) to nitrogen (N₂), measuring not over 31 meters by 24 meters by 20 meters (described in statistical reporting number 8421.39.8040)
- (20) Operator riding self-propelled aerial work platforms of a kind described in statistical note 1 to chapter 84, powered by an electric motor, with a load capacity not exceeding 1,400 kg (described in statistical reporting number 8427.10.8020)
- (21) Tractor shovel loaders, each with 4 wheel drive, a bucket capacity of at least 2.9 m³ but under 3.8 m³, engine of 168 kW to 180 kW, operating weight of 19.1 t (42,000 lbs.) (described in statistical reporting number 8429.51.1035)
- (22) Cement retainer assemblies with diameter of 4.5 cm or more but not exceeding 51 cm and length of 30.5 cm or more but not exceeding 72 cm, composed of cylindrical cast iron components, nitrile rubber seal and brass back-up rings, suitable for use solely or principally with the machinery of

- subheadings 8430.41 or 8430.49 (described in statistical reporting number 8431.43.8060)
- (23) Snow plow blades and frames therefor (described in statistical reporting number 8431.49.9095)
- (24) Wheel and tire assemblies, each having a wheel of plastics no more than 20 cm in diameter and 16 cm in width and having a tire of rubber no more than 40 cm in diameter and 16 cm in width (described in statistical subheading 8432.90.0020)
- (25) Assemblies of parts of seeders for transmitting mechanical hand motions to the gate mechanism for starting, adjusting and stopping the flow of seeds (described in statistical reporting number 8432.90.0060)
- (26) Parts of fertilizer distributors (described in statistical reporting number 8432.90.0060)
- (27) Wheels, of plastics, each wheel being not more than 16 cm in diameter and not more than 8 cm in width (described in statistical reporting number 8432.90.0060)
- (28) Complete pulp making mills, including pulping machinery, screening machinery, cleaning machinery, settling tanks, pumps and filters, each mill valued in its entirety at more than \$2 million and less than \$4 million (described in statistical reporting number 8439.10.0010)
- (29) Complete sections of paper or paperboard making machines, whether or not assembled, for forming (transforming a slurry into a solid sheet) paper or paperboard (described in statistical reporting number 8439.99.1000)
- (30) Subassemblies of the pressing and forming sections of paper or paperboard making machines, whether or not assembled, for assisting in replacement of rollers and fabric (described in statistical reporting number 8439.99.1000)
- (31) Sizer nip rolls of steel and cast iron with polymer cover for finishing paper or paperboard (described in statistical reporting number 8439.99.5000)
- (32) Stapler-stackers of printer units of subheading 8443.32.10, and parts thereof (described in statistical reporting number 8443.99.2050)
- (33) Machines for cold forming light-gauge coiled steel (such steel 0.35 cm or more but not exceeding 0.61 cm in thickness) into corrugated or other multi-ribbed panels (such panels 91.4 cm in width) by progressively passing the steel through at least 15 but no more than 20 shaped rolls and cutting to length with a hydraulic shear (described in statistical reporting number 8455.22.0000)

- (34) Vertical turret lathes, each weighing more than 10,000 kg (described in statistical reporting number 8458.99.1050)
- (35) Machines for slitting metal, numerically controlled, new, each weighing over 2,200 kg but not over 2,300 kg (described in statistical reporting number 8462.31.0080)
- (36) Glass-working machines, numerically controlled, each valued over \$50,000 (described in statistical reporting number 8464.90.0110)
- (37) Woodworking planers with two-knife cutter heads, other than for working in the hand, valued not over \$200 each (described in statistical reporting number 8465.92.0034)
- (38) Edge belt sanders, each valued under \$150, other than for working in the hand, designed for a belt width not over 16 cm (described in statistical reporting number 8465.93.0030)
- (39) Machines for extruding rubber or plastics utilizing two successive single-screw apparatus (described in statistical reporting number 8477.20.0005)
- (40) Extrusion machines for processing rubber, twin-screw type, designed to produce inner liners for tires (described in statistical reporting number 8477.20.0015)
- (41) Machines for cutting plastics, electrically powered, valued not over \$300 per unit (described in statistical reporting number 8477.80.0000)
- (42) Crushing or grinding machines, not used in the manufacture of beverages or crushing of mineral substances, each valued at more than \$10,000 (described in statistical reporting number 8479.82.0080)
- (43) Safety valves, of brass or bronze, containing a fusible element to automatically close the valve at a set temperature, each valued not over \$5 (described in statistical reporting number 8481.40.0000)
- (44) Foot valve housings, of a kind incorporated in paint spraying apparatus, with no external measurement greater than 5 cm (described in statistical reporting number 8481.90.9060)
- (45) Needle roller bearings having an inside diameter of 2.54 cm, an outside diameter of 3.33 cm and a width of 3.81 cm and having cylindrical rollers of a uniform diameter not exceeding 5 mm and having a length which is at least three times the diameter (described in statistical reporting number 8482.40.0000)
- (46) DC electric motors, of an output of less than 18.65 W, other than brushless, measuring less than 38 mm in diameter (described in statistical reporting number 8501.10.4060)

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- (47) DC gear motor of an output exceeding 37.5 W but not exceeding 74.6 W, with a spring coupling mechanism, an output shaft and a locking connector (described in statistical reporting number 8501.31.2000)
 - (48) DC motor of an output exceeding 37.5 W but not exceeding 74.6 W, an actuator with an adjustable rod end with bushing, a bushing for rear mounting, a power cable and a connector (described in statistical reporting number 8501.31.2000)
 - (49) Wound field two-speed DC motors and permanent magnet brushed DC motors, of an output exceeding 67 W but not exceeding 69 W, valued \$8 or more but not exceeding \$17 each (described in statistical reporting number 8501.31.2000)
 - (50) DC motors, electronically commutated, three-phase, eight-pole of a kind used in HVAC systems, of an output of 750 W, valued not over \$100 each (described in statistical reporting number 8501.31.6000)
 - (51) Multi-phase AC motors, of an output not exceeding 110 W, other than gear motors (described in statistical reporting number 8501.51.4040)
 - (52) AC motors, multi-phase, of an output exceeding 14.92 kW or more but not exceeding 75 kW, not of a kind used in civil aircraft (described in statistical reporting number 8501.52.8040)
 - (53) AC multi-phase motors, each with an output exceeding 450 kW, fitted with pulleys and brakes (described in statistical reporting number 8501.53.8060)
 - (54) AC generators (alternators) with output exceeding 75 kVA but not exceeding 375 kVA, designed for electric generating sets of heading 8502 (described in statistical reporting number 8501.62.0000)
 - (55) Speed drive controllers for electric motors, designed for use in vehicles using electric motors for propulsion, including but not limited to material handling equipment, golf carts, sweeper scrubbers and aerial lifts, with a value of \$50.00 or more but not exceeding \$700.00 (described in statistical reporting number 8504.40.4000)
 - (56) Plastic cases designed to contain 9V alkaline cells, measuring 6.35 cm by 13.34 cm by 3.18 cm, with button connectors (described in statistical reporting number 8506.90.0000)
 - (57) Soldering stations, consisting of a benchtop power source, a hand piece, a power cord and work stand, operating by the power source providing electric radio frequency current to heat the hand piece (described in statistical reporting number 8515.19.0000)

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- (58) Radio remote control apparatus of a kind suitable for opening or closing gates (described in statistical reporting number 8526.92.5000)
 - (59) Printed circuit board assemblies, measuring 27.94 cm in length, 17.78 cm in width and 5.08 cm in height, of a kind used in radio remote controller apparatus for radio remote control of machinery, comprising a copper base to which are attached two capacitors, sixteen relays, sixteen varistors, two rows of terminal block connectors, two fuses in black housings with flat-head screw slots on top and an LED number display (described in statistical reporting number 8529.90.1660)
 - (60) Aluminum feed horn assemblies measuring 8.4 cm in length and 5.1 cm in diameter, with operating frequencies of 17.8 to 20.2 GHz (receive) and 28 to 30 GHz (transmit), valued at \$2.75 or more but not exceeding \$2.85 each (described in statistical reporting number 8529.90.9900)
 - (61) Aluminum electrolytic fixed capacitors, exceeding 51 mm in diameter, each valued over \$6.50 but not over \$8 (described in statistical reporting number 8532.22.0085)
 - (62) Multi-layer ceramic, temperature-stable capacitors (temperature coefficient 5XR), with 47 microfarad capacitance, measuring 2 mm by 1.25 mm by 1.25 mm, valued at \$0.08 or more but not exceeding \$0.12 per piece (described in statistical reporting number 8532.24.0020)
 - (63) Fixed electrical carbon film resistors, not designed for surface mounting by contact, having two leads, with a power handling capacity not over 1 W (described in statistical reporting number 8533.10.0065)
 - (64) Wirewound fixed electrical resistors with a power handling capacity not over 20 W, and with a core of glass, ceramic or metal oxide file (described in statistical reporting number 8533.21.0080)
 - (65) Thermistors of ceramic metal oxide, each with two leads (described in statistical reporting number 8533.21.0090)
 - (66) Contact sensors, of a kind used to detect the pressing and releasing of an automotive accelerator pedal, comprising a ceramic board and a rotor housed in a molded plastics body, which together create a potentiometer (rheostat) controlling the actuation of the engine throttle, valued at \$6.70 or more but not exceeding \$7.55 per piece (described in statistical reporting number 8533.40.8040)
 - (67) Motor overload protectors, in 1 pole, 2 pole or 3 pole configurations, with electric current load ratings up to 60 A, measuring 19 mm or more but not exceeding 57 mm in height, 102 mm in length, and 76 mm in width, and

valued at \$6.00 or more but not exceeding \$8.40 per piece (described in statistical reporting number 8536.30.4000)

- (68) Three-pole contactors, operating at 12 to 60 V, with a plastics housing enclosing three movable, silver cadmium oxide contacts (normally open only) rated at 50 A or more but not exceeding 60 A, an electromagnetic coil, a coil spring, coil terminals, polyester actuator, stationary terminals supported by a polyester component, a coil dust cover and an optional insert for an auxiliary switch, valued at \$9.00 or more but not exceeding \$10.00 per piece (described in statistical reporting number 8536.41.0045)
- (69) Rotary switches for a voltage not exceeding 1,000 V, rated at not over 5 A, containing an aluminum shaft in a push-button actuator connected to a nylon housing containing a printed circuit board (described in statistical reporting number 8536.50.9020)
- (70) Momentary contact push-button switches rated at 9 V or more but not exceeding 16 V and not over 50mA, with no dimension exceeding 70 mm (described in statistical reporting number 8536.50.9031)
- (71) Push-button and proximity switches rated at not over 5 A, designed for automotive gearshift applications, with or without connectors (described in statistical reporting number 8536.50.9033)
- (72) Push-button switches rated at over 5 A but not exceeding 20 A, each article having external connections permitting the switch to be wired in either normally open or normally closed configuration (described in statistical reporting number 8536.50.9035)
- (73) Rocker switches, for a current of 16 A or more but not exceeding 20 A (described in statistical reporting number 8536.50.9065)
- (74) Switches for domestic clothes dryers, valued over 35 cents but not over 40 cents each (described in statistical reporting number 8536.50.9065)
- (75) Switches incorporated into latches for domestic appliances, valued over \$ 0.90 but not over \$1.25 each (described in statistical reporting number 8536.50.9065)
- (76) BNC straight radio frequency (RF) male-pin cylindrical connector/terminator plugs, for a voltage not exceeding 1,000 V, with impedance of 51 ohms, rated up to 1 W, measuring not over 29 mm long by 15 mm in diameter (described in statistical reporting number 8536.69.4010)
- (77) Electrical connectors, for a voltage not exceeding 1,000 V, of a kind used to make electrical connections in ballast lighting (described in statistical reporting number 8536.90.4000)

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- (78) Enclosures of alloy steel, containing all the electrical components for underground mining machinery, such enclosures weighing more than 15 t (described in statistical reporting number 8538.10.0000)
 - (79) Polycarbonate cap-shaped covers capable of fitting over a raised control button such as that located on an electronic pet-collar apparatus, each cover 0.39 mm in diameter and 0.134 mm in height (described in statistical reporting number 8538.90.6000)
 - (80) Bodies of gas circuit breakers for electrical utilities, with installed interrupters, each weighing more than 800 kg (described in statistical reporting number 8538.90.8120)
 - (81) Wiring sets for golf carts with electric motor for propulsion (described in statistical reporting number 8544.30.0000)
 - (82) Insulated three conductor cables of copper, for a voltage exceeding 1,000 V, for subsea use, of a length exceeding 3.5 km and weighing over 90 t (described in statistical reporting number 8544.60.4000)
 - (83) Digital optical fiber cables, with connectors, of a length exceeding 0.5 m but not exceeding 4.0 m (described in statistical reporting number 8544.70.0000)
 - (84) Gearhead assemblies and parts thereof, for use in civil aircraft other than by the Department of Defense or the United States Coast Guard, each valued not over \$90 (described in statistical reporting number 8803.30.0030)
 - (85) Output carriers, of passivated stainless steel, having a gear measuring 36.754 mm in length and 33.782 mm in diameter, with 17 teeth each of a maximum circular thickness of 0.8306 mm, of a kind used in a gearhead assembly for the high-lift system of aircraft, for use in civil aircraft other than by the Department of Defense or the United States Coast Guard (described in statistical reporting number 8803.30.0030)
 - (86) Flexible pressure sensitive LCD panel display devices used as a surface for electronic writing (described in statistical reporting number 9013.80.7000)
 - (87) Therapeutic mouthpieces, of silicone and polycarbonate plastics, having embedded infrared (880 nm) and red (660 nm) LED lights, of a kind used for radiating the upper and lower gum lines within the mouth, valued at \$45 or more but not over \$50 each (described in statistical reporting number 9018.20.0040)
 - (88) Negative pressure wound therapy systems (described in statistical reporting number 9018.90.7560)

- (89) Combined positron emission tomography/computed tomography (PET/CT) scanners which utilize multiple PET gantries (frames) on a common base (described in statistical reporting number 9022.12.0000)
- (90) Programmable DC electronic load instruments capable of presenting a constant load to a device, such as constant resistance, constant voltage, constant current, or constant power, weighing more than 4 kg but less than 8 kg (described in statistical reporting number 9030.33.3800)
- (91) Current probes for oscilloscopes (described in statistical reporting number 9030.90.8911)
- (92) Booths, measuring 61 cm in width, 70 cm in length and 94.5 cm in height, with integrated cooling fans and an LCD display with touch-pad controller, of a kind used to demonstrate and assess the effects of alternative lighting conditions on surface colors (described in statistical reporting number 9031.49.9000)”

3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III of chapter 99 by:
 - a. deleting the word “or” where it appears after the phrase “U.S. note 20(n) to subchapter III of chapter 99;” and
 - b. inserting “; or (7) heading 9903.88.19 and U.S. note 20(x) to subchapter III of chapter 99” after the phrase “U.S. note 20(q) to subchapter III of chapter 99”, where it appears at the end of the sentence.
4. by amending the first sentence of U.S. note 20(b) to subchapter III of chapter 99 by:
 - a. deleting the word “or” where it appears after the phrase “U.S. note 20(n) to subchapter III of chapter 99;” and
 - b. inserting “; or (7) heading 9903.88.19 and U.S. note 20(x) to subchapter III of chapter 99” after the phrase “U.S. note 20(q) to subchapter III of chapter 99”, where it appears at the end of the sentence.
5. by amending the Article Description of heading 9903.88.01:

- a. by deleting “9903.88.11 or”;
 - b. by inserting in lieu thereof “9903.88.11, ”; and
 - c. by inserting “or 9903.88.19,” after “9903.88.14.”
- B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(q)(115) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Machine tool stands having leveling, stabilizing, attachment or other special features (described in statistical reporting number 8466.30.8000)".
- C. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(q)(132) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Granulating machines not specifically designated for use with specific particulate materials, each valued more than \$25,000 (described in statistical reporting number 8479.89.9499)".
- D. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(q)(133) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "Vertical or single shaft shredding machines of a kind suitable for use in the recycling industry, weighing over 10,000 kg but not over 15,000 kg each (described in statistical reporting number 8479.89.9499)".
- E. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(q)(216) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "CB radio antennas (described in statistical reporting number 8529.10.9100)".

[FR Doc. 2019-21420 Filed 10-1-19; 8:45 am]

BILLING CODE 3290-F9-C

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Request To Release Airport Property for Land Disposal**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Rule on Release of Airport Property for Land Disposal at the Malden Regional Airport & Industrial Park (MAW), Malden, Missouri.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Malden Regional Airport & Industrial Park (MAW), Malden, Missouri.

DATES: Comments must be received on or before November 1, 2019.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE-620G, 901 Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to: David Blalock, Airport Manager, City of Malden Regional Airport & Industrial Park, 3077 Mitchell Drive, P.O. Box 411, Malden, MO 63863-0411, (573) 276-2279.

FOR FURTHER INFORMATION CONTACT:

Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE-620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329-2603, amy.walter@faa.gov. The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release two tracts of land approximately 2.44 acres and 9.79 acres each, of airport property at the Malden Regional Airport & Industrial Park (MAW) under the provisions of 49 U.S.C. 47107(h)(2). This is a Surplus Property Airport. On May 21, 2019, the Airport Manager of the City of Malden requested a release from the FAA to sell two tracts of land, 2.44 acres and 9.79 acres each. Buyer, Walt Construction, LLC, will use the land for development. On September 25, 2019, the FAA determined that the request to release property at the Malden Regional Airport & Industrial Park (MAW) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Malden Regional Airport & Industrial Park (MAW) is proposing the release of airport property containing two tracts of land, 2.44 acres and 9.79 acres each, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Malden Regional Airport & Industrial Park (M) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to dispose of the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Malden City Hall.

Issued in Kansas City, MO on September 25, 2019.

Jim A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2019-21363 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for Newark Liberty International Airport for the Summer 2020 Scheduling Season

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 3, 2019, for Summer 2020 flight schedules at Newark Liberty International Airport (EWR). The deadline coincides with the schedule submission deadline for the International Air Transport Association (IATA) Slot Conference for the Summer 2020 scheduling season.

DATES: Schedules must be submitted no later than October 3, 2019.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC-200, Office of the Chief Counsel, 800 Independence Avenue SW, Washington, DC 20591; facsimile: 202-267-7277; or by email to: 7-AWA-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Al Meilus, Manager (Acting), Slot Administration Office, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-2822; email Al.Meilus@faa.gov.

SUPPLEMENTARY INFORMATION: This document provides routine notice to carriers serving EWR, one of the capacity-constrained airports in the United States, of the upcoming schedule submission deadline for Summer 2020. The FAA has designated EWR as an IATA Level 2 airport consistent with the

Worldwide Slot Guidelines (WSG).^{1,2} A separate schedule submission notice for John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Chicago O'Hare International Airport (ORD), and San Francisco International Airport (SFO) was published in the **Federal Register** on September 27, 2019 (84 FR 51222).

General Information for EWR in the Summer 2020 Season

For the Summer 2020 scheduling season at EWR, the FAA is primarily concerned about scheduled and other regularly conducted commercial operations from 0600 to 2300 Eastern Time (1000 to 0300 UTC). Carriers may submit schedules for the entire day in addition to the identified hours. Carriers should submit schedule information in sufficient detail including, at minimum, the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. IATA standard schedule information format and data elements for communications at Level 2 airports in the IATA Standard Schedules Information Manual (SSIM) Chapter 6 may be used. The WSG provides additional information on schedule submissions at Level 2 airports.

The U.S. Summer 2020 scheduling season is from March 29, 2020, through October 24, 2020, in recognition of the IATA northern Summer scheduling period.

As stated in the WSG, schedule facilitation at a Level 2 airport is based on the following: (1) Schedule adjustments are mutually agreed upon between the airlines and the facilitator; (2) the intent is to avoid exceeding the airport's coordination parameters; (3) the concepts of historic precedence and series of slots do not apply at Level 2 airports; although WSG recommends giving priority to approved services that plan to operate unchanged from the previous equivalent season at Level 2 airports; and (4) the facilitator should adjust the smallest number of flights by the least amount of time necessary to avoid exceeding the airport's coordination parameters. Consistent with the WSG, the success of Level 2 in the U.S. depends on the voluntary cooperation of all carriers.

The FAA considers several factors and priorities as it reviews schedule

¹ This designation remains effective until the FAA announces a change in the **Federal Register**.

² The FAA applies the WSG to the extent there is no conflict with U.S. law or regulation. The FAA is reviewing recent substantive amendments to the WSG adopted in version 10 (Aug. 1, 2019) and considering whether to implement certain changes in the U.S.

requests at Level 2 airports, which are consistent with the WSG, including—services from the previous equivalent season over new demand for the same timings, services that are unchanged over services that plan to change time or other capacity relevant parameters, introduction of year-round services, effective period of operation, regularly planned operations over *ad hoc* operations, and other operational factors that may limit a carrier's timing flexibility. In addition to applying these Level 2 priorities from the WSG, the U.S. Government has adopted a number of measures and procedures to promote competition and new entry at U.S. slot controlled and schedule facilitated airports.

At Level 2 airports, the FAA seeks to improve communications with carriers and terminal schedule facilitators on potential runway schedule issues or terminal and gate issues that may affect the runway times. The FAA also seeks to reduce the time that carriers consider proposed offers on schedules. Retaining open offers for extended periods of time may delay the facilitation process for the airport. Reducing this delay is particularly important to allow the FAA to make informed decisions at airports where operations in some hours are at or near the scheduling limits. The agency recognizes that there are circumstances that may require some schedules to remain open. However, the FAA expects to substantially complete the review process on initial submissions each scheduling season within 30 days of the end of the Slot Conference. After this time, the agency would confirm the acceptance of proposed offers, as applicable, or issue a denial of schedule requests.

Slot management in the United States differs in some respect from procedures in other countries. In the United States, the FAA is responsible for facilitation and coordination of runway access for takeoffs and landings at Level 2 and Level 3 airports; however, the airport authority or its designee is responsible for facilitation and coordination of terminal/gate/airport facility access. The process with the individual airports for terminal access and other airport services is separate from, and in addition to, the FAA schedule review based on runway capacity. Approval from the FAA for runway availability and the airport authority for airport facility availability is necessary before implementing schedule plans. Carriers seeking terminal approval at EWR may contact the terminal facilitator at ewrslots@panynj.gov.

Generally, the FAA uses average hourly runway capacity throughput for

airports and performance metrics in its schedule review at Level 2 airports.³ The FAA also considers other factors that can affect operations, such as capacity changes due to runway, taxiway, or other airport construction, air traffic control procedural changes, airport surface operations, and historical or projected flight delays and congestion.

The FAA notes that it remains committed to the implementation of reference IDs for administrative tracking at EWR, as discussed in the Notice of Schedule Submission for the Winter 2019/2020 Scheduling Season, 84 FR 18630 at 18632 (May 1, 2019), and will continue working with carriers to implement this tracking tool.

Finally, the FAA notes that the schedule information submitted by carriers to the FAA may be subject to disclosure under the Freedom of Information Act (FOIA). The WSG also provides for release of information at certain stages of slot coordination and schedule facilitation. In general, once it acts on a schedule submission or slot request, the FAA may release information on slot allocation or similar slot transactions or schedule information reviewed as part of the schedule facilitation process. The FAA does not expect that practice to change and most slot and schedule information would not be exempt from release under FOIA. The FAA recognizes that some carriers may submit information on schedule plans that is both customarily and actually treated as private. Carriers that submit such confidential schedule information should clearly mark the information as "PROPIN". The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

EWR Operational Performance

The FAA regularly monitors operations and performance metrics at EWR to identify ways to improve operational efficiency and achieve delay reductions in a Level 2 environment. Demand for access to EWR and the New York City area remains high. Requests for flights at EWR have exceeded the

³ The FAA typically determines an airport's average adjusted runway capacity or typical throughput for Level 2 airports by reviewing hourly data on the arrival and departure rates that air traffic control indicates could be accepted for that hour, commonly known as "called" rates. The FAA also reviews the actual number of arrivals and departures that operated in the same hour. Generally, the FAA uses the higher of the two numbers, called or actual, for identifying trends and schedule review purposes. Some dates are excluded from analysis, such as during periods when extended airport closures or construction could affect capacity.

scheduling limits in the early morning and for multiple hours in the afternoon and evening. The FAA has regularly advised carriers that it would not be able to accommodate requests for new or retimed operations into peak hours and worked with carriers to identify alternative times that were available. In some cases, carriers have been able to swap with other carriers for their preferred times. Carriers may continue to seek swaps in order to operate within the peak, but are ultimately expected to operate according to the FAA's approved runway times. The FAA also continues to seek the voluntary cooperation of all carriers operating in peak hours to retime operations out of the peak to meet the scheduling limits described below and improve performance at EWR, benefitting all carriers, passengers, and other customers.

For the Summer 2020 season, the hourly scheduling limit remains at 79 operations and 43 operations per half-hour.⁴ Based on historical demand and recent schedule changes, the FAA anticipates limited or no availability in the 0700 to 0859 and 1330 to 2159 local hours for new flights within the applicable scheduling limits. In addition, consistent with FAA's usual practices, availability in shoulder/adjacent periods may be limited in order to offset peak demand. To help with a balance between arrivals and departures, the maximum number of scheduled arrivals or departures, respectively, is 43 in an hour and 24 in a half-hour. This would allow some higher levels of operations in certain periods (not to exceed the hourly limits) and some recovery from lower demand in adjacent periods. Consistent with past practice at EWR, the FAA will accept flights above the limits if the approved flights were operated by the same carrier on a regular basis in the previous corresponding season (*i.e.*, Summer 2019). However, as previously explained, the FAA's preference is for carriers to voluntarily retime operations out of the peak periods and to smooth schedules in other hours to ensure operations are within the applicable limits. Absent such adjustments, the operational performance of the airport is unlikely to improve.

The FAA notes there are periods when the demand in half-hours and consecutive half-hours exceeds the optimum runway capacity and the scheduling limits in this notice.⁵ The

⁴ 83 FR 21335 (May 1, 2018).

⁵ Following the Level 2 designation effective with the winter 2016/2017 scheduling season, the FAA

imbalance of scheduled arrivals and departures in certain periods has contributed to increased congestion and delays when the demand exceeds the arrival or departure rates. In particular, retiming a minimal number of arrivals in the early afternoon hours such as 1400 to instead be scheduled during the 1300 and 1200 hours could have significant delay reduction benefits, as early afternoon delays continue to impact operations into the evening hours.

Consistent with the WSG, carriers should be prepared to adjust schedules to meet the scheduling limits in order to minimize potential congestion and delay. Carriers are reminded that runway approval must be obtained from the FAA in addition to any requirements for approval from the airport terminal or other facilities prior to operating flights at the airport. As the FAA has previously stated, if voluntary schedule adjustments are not achievable, consideration may be given to whether a Level 3 designation is necessary and whether a schedule reduction meeting pursuant to 49 U.S.C. 41722 is necessary. If the FAA reinstates Level 3 at EWR, historic precedence would not be granted for any operation conducted without FAA approval under Level 2.

Southwest's EWR Station Closure

On July 25, 2019, Southwest Airlines (Southwest) announced that it will cease operations at EWR effective November 3, 2019.⁶ The FAA has received numerous inquiries from various public and private entities concerning the effects of Southwest's plans, including multiple requests for approval of new operations to replace the operations previously conducted by Southwest.

On a peak summer weekday, Southwest operated up to 40 operations at EWR, a portion of which (approximately 16) were in the peak periods. As noted previously, several hours in the high demand periods at EWR are above the FAA's stated scheduling limits. In an effort to improve performance at EWR, the FAA has consistently stated in prior seasonal schedule submission notices that new operations will not be approved unless the period is below the FAA scheduling

limits.⁷ Consistent with this approach, the FAA will not be approving new flights in peak hours for the Summer 2020 scheduling season if operations are at or above the applicable scheduling limits. The FAA plans to assess the impacts of the peak period Southwest reductions and other schedule changes at EWR on performance, as well as the impacts on competition in close coordination with the Office of the Secretary of Transportation, in the upcoming Winter 2019/2020 and Summer 2020 scheduling seasons. The FAA intends to publish additional information on the outcome of this assessment in future notices related to these airports. However, the FAA will not during that assessment period be replacing or "backfilling" the peak morning and afternoon/evening operations that Southwest conducted during Winter 2018/2019 and Summer 2019, to the extent the new operations would exceed the current scheduling limits. New operations are being approved by the FAA, subject to terminal and gate availability, in off-peak hours in which operations are below the scheduling limits, including any offsets for periods above the limits, consistent with established FAA policy and procedures as described in seasonal notices and the WSG.⁸ In addition, the FAA is tracking unmet schedule requests at EWR for future consideration.

The FAA will continue to follow the established schedule facilitation process at EWR consistent with the IATA WSG and as described in prior schedule submission notices.⁹ In periods with limited availability, new entrant carriers may be prioritized consistent with the IATA WSG, as appropriate. Carriers requesting new operations in off-peak periods with sufficient availability may be approved. The FAA will continue to closely monitor demand in each hour at EWR and, based on recent requests or inquiries for additional flights, the FAA expects availability to change in some off-peak periods.

EWR Runway 4R/22L Preliminary Construction Plans

The FAA is aware of preliminary plans by the Port Authority of New York and New Jersey (PANYNJ) to reconstruct

Runway 4R/22L at EWR. The FAA is closely monitoring the scope and timing of this project. Once the details of this project are available, the FAA plans to work with the PANYNJ and carriers to assess operational impacts and potential changes in delays and to develop mitigation strategies, as appropriate.

Issued in Washington, DC on September 27, 2019.

Virginia Boyle,

Deputy Vice President, System Operations Services.

[FR Doc. 2019-21485 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA-2019-55]

Petition for Exemption; Summary of Petition Received; U.S. Aviation Academy

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 22, 2019.

ADDRESSES: Send comments identified by docket number FAA-2019-0626 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

has rolled out reduced hourly scheduling limits from 81 per hour to 79 and applied additional half-hour and arrival and departure limits.

⁶ Southwest Airlines Press Release <https://www.swamedia.com/releases/release-424146113c6f2a2eebe84fb61d59a4ff-southwest-reports-record-second-quarter-revenues-and-earnings-per-share>.

⁷ See e.g., Notice of Submission Deadline for the Winter 2019/2020 Scheduling Season, 84 FR 18630 at 18632 (May 1, 2019); Notice of Submission Deadline for the Summer 2019 Scheduling Season, 83 FR 49155 at 49156-49157 (Sep. 28, 2018); and, Notice of Submission Deadline for the Winter 2018/2019 Scheduling Season, 83 FR 21335 at 21337-21338 (May 9, 2018).

⁸ See supra note 7.

⁹ See supra note 7.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: 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 <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso Pendergrass (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 24, 2019.

Forest Rawls III,

Acting Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0626.

Petitioner: U.S. Aviation Academy.

Section(s) of 14 CFR Affected: § 141.37(b)(2).

Description of Relief Sought: To allow the U.S. Aviation Academy to create an FAA Part 141 special curriculum for check instructors which includes prerequisites exceeding 141.37. Certified flight instructors who graduate this FAA-approved check instructor course would be automatically approved to act as check instructors without further action from the FAA.

[FR Doc. 2019–21449 Filed 10–1–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0362]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Maintenance, Preventive Maintenance, Rebuilding, and Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 13, 2019. The information to be collected is necessary to insure the safety of the flying public. Documentation of maintenance repair actions record who, what, when, where and how of the task performed. This collection focuses on the Form 337 which is collected by the FAA. Other records for preventative maintenance, and logbook entries are not collected by the FAA serve as a responsibility of the owner to maintain in case of verification of airworthiness when seeking approvals or sale of the aircraft. This insures proper certification of personnel; proper tooling is utilized and accurate measures to insure safety. Total form 337s submitted in 2017 is 54,237. Total aircraft registrations on file is 289,490. It is estimated by the numbers collected one in every five aircraft have a 337 form submitted for major alteration and repairs performed. Each 337 takes approximately 1 hour.

DATES: Written comments should be submitted by November 1, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oira_submission@omb.eop.gov, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jude Sellers by email at: jude.n.sellers@faa.gov or by telephone at: (225) 788–1829.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0020.

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Form Numbers: Aircraft maintenance logbooks and form 337.

Type of Review: Renewal of information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 13, 2019 (84 FR 20946). Title 14 CFR part 43 mandates information to be provided when an alteration or major repair is performed on an aircraft of United States registry. Submission of Form 337 is required for capture in the aircraft permanent records for current and future owners to substantiate the requirements of the regulations, prior to operation of the aircraft. Aircraft owners have the responsibility of documentation and submission of all maintenance records performed to their aircraft.

Respondents: 54,237 Aircraft owners.

Frequency: On occasion. When major repairs or alterations are accomplished on Aircraft bearing a “N” number.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: Industry Annual burden 54,237 man hours at an annual cost of \$1,193,214.

Issued in Washington, DC on September 26, 2019.

Jude Sellers,

Aviation Safety Inspector, AFS–350 General Aviation Maintenance Branch.

[FR Doc. 2019–21389 Filed 10–1–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Finding of No Significant Impact/ Record of Decision on Perimeter Road at Jackson Medgar Wiley Evers International Airport Jackson, MS**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of finding of no significant impact/record of decision.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has issued a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the Environmental Assessment (EA) that evaluated the rehabilitation of an existing 5.4-mile service road and construction of two connecting service roads at Jackson Medgar Wiley Evers International Airport (JAN) in Jackson, Mississippi. The FONSI/ROD provides final agency determination and approval for those federal actions by the FAA necessary to implement the project. The effective date of the FAA's determination on the FONSI/ROD is August 30, 2019.

FOR FURTHER INFORMATION CONTACT: Brian Hendry, Community Planner, Jackson Airports District Office, 100 West Cross St., Suite B, Jackson, MS 39208. Telephone (601) 664-9897.

SUPPLEMENTARY INFORMATION: The Jackson Municipal Airport Authority (JMAA) has requested financial assistance to rehabilitate an existing 5.4-mile service road and construction of two connecting service roads. Issuing an Airport Improvement Program Grant is considered a Federal action and requires and environmental determination by the FAA.

JMAA has completed an EA for the project known as the Rehabilitation of Outer Perimeter Service Road. The project involves the rehabilitation an existing 5.4-mile service road as well as construction of two connecting service roads that will provide safer and more secure access to the service perimeter road of Jackson Medgar Wiley Evers International Airport (JAN). The EA was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality (CEQ) Regulations, 40 Code of Federal Regulations (CFR) Parts 1500-1508, and FAA Orders 1050.1F and 5050.4B.

The objective of the EA was to evaluate alternatives that met the airport sponsor's purpose and need statement. The airport sponsor's purpose and need statement is the rehabilitation of the Perimeter Service Road that will enhance the safety and security of the airport by rehabilitating the existing perimeter service road inside the perimeter fence as well as paving new roadway areas for contiguous access. These improvements will provide airport owned and emergency vehicle access to all areas of the airfield to support Aircraft Rescue and Firefighting ("ARFF") functions and security patrols performed by JMAA's Airport Operations Department staff. Currently, the JAN property boundary lacks perimeter service roads in certain areas making access for Airport Operations extremely difficult, especially after rainy conditions. (See Appendix A—Site Layout Map).

Two (2) alternatives to the proposed action were examined to determine feasibility and ability to meet the purpose and need.

Alternative 1: Rehabilitate Existing Road with Improved Enhancements and Features. This would provide repairs enhancements and features to rehabilitate the existing road. This is anticipated to be more cost effective than adding the additional roadway. However, only rehabilitating the existing road is determined not to meet full purpose and need for project with regard to safety and security. *Alternative 2:* No Action: Results in further deterioration of the existing perimeter service road. Of the build alternatives proposed, only one (Alternatives 1) met the purpose and need statement.

The EA documents show that the No Action Alternative would not satisfy the purpose and need statement.

As addressed in the EA, Alternative 1 has the potential to affect wetland areas on the airport property comprised of frequently to periodically mowed herbaceous field. The delineated wetland areas are represented within Appendix E of the EA. The Airport will secure the necessary construction and other permits required by MDEQ and USACE regarding Section 401 water quality certification. Section 404 permit(s) as administered by the USACE will be secured prior to construction. The Preferred Alternative could require an Individual Section 404 permit. Refined design will dictate impacts and thus the necessary permitting process.

Any mitigation for unavoidable impacts will occur at a USACE-approved mitigation bank.

As part of the EA process, the FAA coordinated with the U.S. Army Corps of Engineers. The project was coordinated with the U.S. Army Corps of Engineers (USACE) as the key federal agency with jurisdiction to define wetlands in the United States. The preferred alternative was chosen over the No Action Alternative due to lack of access via the service road that would compromise airport safety and accessibility in case of emergency and for regular operations. It has been determined there will be wetland impacts of 0.52 acres. USACE indicates the proposed work will require a permit. Mitigation will be required as part of USACE's permitting process. (USACE April 26, 2019 letter Appendix E).

The EA included outreach with other federal, state, and local agencies such as U.S. Fish and Wildlife Service, Dept. of Transportation, and the MS Dept. of Archives and History (State Historic Preservation Office)

After reviewing the EA, the FAA concluded impacts, with mitigation, would be below the level of significance and issued the FONSI/ROD on August 30, 2019. The FONSI/ROD presents the FAA's final decision and approvals of the actions identified, including those taken under the provisions of Title 49 of the United States Code, Subtitle VII, Parts A and B. These actions constitute a final order of the Administrator subject to review by the Court of Appeals of the United States in accordance with the provisions of 49 U.S.C. 46110.

Availability of EA and FONSI/ROD: Copies of the EA and FONSI/ROD are available at the locations listed below. The documents are available during normal business hours unless otherwise indicated.

Federal Aviation Administration, Jackson Airports District Office, 100 West Cross St. Suite B, Jackson, MS 39208.

* Please call (601) 664-9897 to schedule an appointment to view documents at this location.

Issued in Jackson, MS on August 30, 2019.

Rans Black,

Manager, Jackson Airports District Office.

[FR Doc. 2019-21415 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-1999-5578; FMCSA-1999-5748; FMCSA-2000-7165; FMCSA-2000-7918; FMCSA-2003-15892; FMCSA-2004-17984; FMCSA-2005-20560; FMCSA-2005-21711; FMCSA-2007-29019; FMCSA-2008-0021; FMCSA-2009-0086; FMCSA-2009-0121; FMCSA-2009-0154; FMCSA-2009-0206; FMCSA-2010-0161; FMCSA-2011-0057; FMCSA-2011-0124; FMCSA-2011-0141; FMCSA-2013-0025; FMCSA-2013-0027; FMCSA-2013-0029; FMCSA-2014-0300; FMCSA-2014-0304; FMCSA-2015-0048; FMCSA-2015-0052; FMCSA-2015-0055; FMCSA-2015-0056; FMCSA-2016-0377; FMCSA-2017-0017; FMCSA-2017-0020; FMCSA-2017-0022; FMCSA-2017-0023]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 79 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before November 1, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-1999-5578, Docket No. FMCSA-1999-5748, Docket No. FMCSA-2000-7165, Docket No. FMCSA-2000-7918, Docket No. FMCSA-2003-15892, Docket No. FMCSA-2004-17984, Docket No. FMCSA-2005-20560, Docket No. FMCSA-2005-21711, Docket No. FMCSA-2007-29019, Docket No. FMCSA-2008-0021, Docket No. FMCSA-2009-0086, Docket No. FMCSA-2009-0121, Docket No. FMCSA-2009-0154, Docket No. FMCSA-2009-0206, Docket No. FMCSA-2010-0161, Docket No. FMCSA-2011-0057, Docket No. FMCSA-2011-0124, Docket No. FMCSA-2011-0141, Docket No. FMCSA-2013-0025, Docket No. FMCSA-2013-0027, Docket No.

FMCSA-2013-0029, Docket No. FMCSA-2014-0300, Docket No. FMCSA-2014-0304, Docket No. FMCSA-2015-0048, Docket No. FMCSA-2015-0052, Docket No. FMCSA-2015-0055, Docket No. FMCSA-2015-0056, Docket No. FMCSA-2016-0377, Docket No. FMCSA-2017-0017, Docket No. FMCSA-2017-0020, Docket No. FMCSA-2017-0022, or Docket No. FMCSA-2017-0023 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <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:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments **FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366-9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation***A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-1999-5578; FMCSA-1999-5748; FMCSA-2000-7165; FMCSA-2000-7918; FMCSA-2003-15892; FMCSA-2004-17984; FMCSA-2005-20560; FMCSA-2005-21711; FMCSA-2007-29019; FMCSA-2008-0021; FMCSA-2009-0086; FMCSA-2009-0121; FMCSA-2009-0154; FMCSA-2009-0206; FMCSA-2010-0161; FMCSA-2011-0057; FMCSA-2011-0124; FMCSA-2011-0141; FMCSA-2013-0025; FMCSA-2013-0027; FMCSA-2013-0029; FMCSA-2014-0300; FMCSA-2014-0304; FMCSA-2015-0048; FMCSA-

2015-0052; FMCSA-2015-0055; FMCSA-2015-0056; FMCSA-2016-0377; FMCSA-2017-0017; FMCSA-2017-0020; FMCSA-2017-0022; or FMCSA-2017-0023), 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-1999-5578; FMCSA-1999-5748; FMCSA-2000-7165; FMCSA-2000-7918; FMCSA-2003-15892; FMCSA-2004-17984; FMCSA-2005-20560; FMCSA-2005-21711; FMCSA-2007-29019; FMCSA-2008-0021; FMCSA-2009-0086; FMCSA-2009-0121; FMCSA-2009-0154; FMCSA-2009-0206; FMCSA-2010-0161; FMCSA-2011-0057; FMCSA-2011-0124; FMCSA-2011-0141; FMCSA-2013-0025; FMCSA-2013-0027; FMCSA-2013-0029; FMCSA-2014-0300; FMCSA-2014-0304; FMCSA-2015-0048; FMCSA-2015-0052; FMCSA-2015-0055; FMCSA-2015-0056; FMCSA-2016-0377; FMCSA-2017-0017; FMCSA-2017-0020; FMCSA-2017-0022; or FMCSA-2017-0023, 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.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-1999-5578; FMCSA-1999-5748; FMCSA-2000-7165; FMCSA-2000-7918; FMCSA-

2003–15892; FMCSA–2004–17984; FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2007–29019; FMCSA–2008–0021; FMCSA–2009–0086; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2010–0161; FMCSA–2011–0057; FMCSA–2011–0124; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2014–0300; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022; or FMCSA–2017–0023, 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., ET, 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.dot.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or

without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 79 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 79 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 65 FR 33406; 65 FR 57234; 65 FR 66286; 66 FR 13825; 66 FR 63289; 68 FR 13360; 68 FR 52811; 68 FR 61860; 68 FR 64944; 69 FR 33997; 69 FR 61292; 70 FR 12265; 70 FR 17504; 70 FR 30997; 70 FR 48797; 70 FR 61165; 70 FR 61493; 70 FR 67776; 71 FR 55820; 71 FR 62147; 72 FR 11426; 72 FR 27624; 72 FR 40362; 72 FR 54971; 72 FR 58362; 72 FR 64273; 72 FR 67344; 73 FR 15567; 73 FR 27015; 73 FR 65009; 74 FR 8302; 74 FR 19267; 74 FR 19270; 74 FR 26461; 74 FR 28094; 74 FR 34394; 74 FR 34630; 74 FR 37295; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 57551; 74 FR 57553; 74 FR 62632; 75 FR 19674; 75 FR 39725; 75 FR 61833; 76 FR 4413; 76 FR 12216; 76 FR 18824; 76 FR 25762; 76 FR 29024; 76 FR 32016; 76 FR 34136; 76 FR 37168; 76 FR 40445; 76 FR 53710; 76 FR 54530; 76 FR 55463; 76 FR 62143; 76 FR 64171; 76 FR 66123; 76 FR 70212; 76 FR 70215; 77 FR 23797; 77 FR 56262; 78 FR 18667; 78 FR 20376; 78 FR 24300; 78 FR 24798; 78 FR 32703; 78 FR 34141; 78 FR 34143; 78 FR 46407; 78 FR 51269; 78 FR 52602; 78 FR 64280; 78 FR 68137; 78 FR 77782; 79 FR 4531; 79 FR 23797; 79 FR 24298; 79 FR 51642; 80 FR 2473; 80 FR 14223; 80 FR 16500; 80 FR 18693; 80 FR 25768; 80 FR 26139; 80 FR 26320; 80 FR 29149; 80 FR 31635; 80 FR 33011; 80 FR 35699; 80 FR 37718; 80 FR 44188; 80 FR 48404; 80 FR 48409; 80 FR 49302; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 81 FR 1284; 81 FR 71173; 82 FR 13045; 82 FR 18956; 82 FR 20962; 82 FR 32919; 82 FR 33542; 82 FR 34564; 82 FR 37499; 82 FR 37504; 82 FR 43647; 82 FR 47296; 82 FR 47309; 82 FR 47312; 83 FR 2289; 83 FR 3861; 83 FR 4537). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver’s ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of November and are discussed below. As of November 3, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 56 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 33406; 65 FR 57234; 65 FR 66286; 66 FR 13825; 68 FR 13360; 68 FR 52811; 68 FR 61860; 69 FR 33997; 69 FR 61292; 70 FR 12265; 70 FR 48797; 70 FR 61165; 70 FR 61493; 71 FR 62147; 72 FR 11426; 72 FR 27624; 72 FR 54971; 73 FR 15567; 73 FR 27015; 74 FR 8302; 74 FR 19267; 74 FR 19270; 74 FR 26461; 74 FR 28094; 74 FR 34630; 74 FR 37295; 74 FR 48343; 74 FR 49069; 74 FR 53581; 75 FR 19674; 75 FR 39725; 75 FR 61833; 76 FR 12216; 76 FR 25762; 76 FR 32016; 76 FR 37168; 76 FR 40445; 76 FR 53710; 76 FR 62143; 76 FR 64171; 77 FR 23797; 77 FR 56262; 78 FR 18667; 78 FR 20376; 78 FR 24300; 78 FR 24798; 78 FR 32703; 78 FR 34141; 78 FR 34143; 78 FR 46407; 78 FR 51269; 78 FR 52602; 78 FR 68137; 78 FR 77782; 79 FR 4531; 79 FR 23797; 79 FR 51642; 80 FR 2473; 80 FR 14223; 80 FR 16500; 80 FR 18693; 80 FR 25768; 80 FR 26139; 80 FR 26320; 80 FR 29149; 80 FR 31635; 80 FR 33011; 80 FR 35699; 80 FR 37718; 80 FR 44188; 80 FR 48404; 80 FR 48409; 80 FR 49302; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 81 FR 1284; 81 FR 71173; 82 FR 13045; 82 FR 18956; 82 FR 20962; 82 FR 32919; 82 FR 33542;

82 FR 34564; 82 FR 37499; 82 FR 37504; 82 FR 43647; 82 FR 47296; 82 FR 47309; 82 FR 47312; 83 FR 2289; 83 FR 3861; 83 FR 4537);

Steven B. Anderson (ID)
 Gregory W. Babington (MA)
 Ronald Bostick (SC)
 Brian M. Bowman (TN)
 Eric L. Boyle, Jr. (MD)
 Steven J. Brauer (NJ)
 Robert J. Burns (KY)
 Charles C. Chapman (NC)
 Roderick Croft (FL)
 Jeffrey S. Daniel (VA)
 Mark P. Davis (ME)
 John J. Davis (SC)
 Chris M. DeJong (NM)
 Dan J. Feik (IL)
 Saul E. Fierro (AZ)
 John A. Gartner (MN)
 Elias Gomez, Jr. (TX)
 Keith N. Hall (UT)
 Donald A. Hall (NC)
 Walter A. Hanselman (IN)
 Robert D. Hattabaugh (AR)
 Dustin L. Hawkins (MO)
 Dean R. Hawley (NC)
 Steven E. Hayes (IN)
 Amos S. Hostetter (OH)
 James T. Johnson (KY)
 Michael A. Kelly (TX)
 Mark L. LeBlanc (MN)
 David F. LeClerc (MN)
 Stephen C. Linares (FL)
 Daniel C. Linares (CA)
 Robert E. Mayers (MN)
 James G. Miles (TN)
 Jeffrey M. Mueller (MO)
 Charles W. Mullenix (GA)
 Pablo R. Murillo (TX)
 Ricky Nickell (OH)
 Jesse A. Nosbush (MN)
 Lonnie D. Prejean (TX)
 Matias P. Quintanilla (CA)
 Alonzo K. Rawls (NJ)
 Berry A. Rodrigue (LA)
 Roger D. Rogers (PA)
 Manuel H. Sanchez (TX)
 Ricky J. Sanderson (UT)
 Brandon L. Siebe (KY)
 Gregory C. Simmons (VA)
 Efreñ J. Soliz (NM)
 Wayne M. Stein (FL)
 John B. Stiltner (KY)
 Dale G. Stringer (TX)
 James B. Taflinger, Sr. (VA)
 James B. Tucker (KY)
 Arnulfo J. Valenzuela (TX)
 Danny L. Watson (TN)
 William E. Zezulka (MN)

The drivers were included in docket numbers FMCSA–2000–7165; FMCSA–2000–7918; FMCSA–2003–15892; FMCSA–2004–17984; FMCSA–2005–21711; FMCSA–2008–0021; FMCSA–2009–0086; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2010–0161; FMCSA–2011–0141; FMCSA–

2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2014–0300; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022; and FMCSA–2017–0023. Their exemptions are applicable as of November 3, 2019, and will expire on November 3, 2021.

As of November 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 17504; 70 FR 30997; 70 FR 48797; 70 FR 61493; 72 FR 40362; 72 FR 54971; 74 FR 34394; 74 FR 43217; 74 FR 49069; 74 FR 57551; 76 FR 18824; 76 FR 29024; 76 FR 34136; 76 FR 54530; 76 FR 55463; 76 FR 66123; 78 FR 77782; 79 FR 24298; 80 FR 63869; 83 FR 3861):

James J. Doan (PA)
 James E. Fix (SC)
 James P. Greene (NY)
 Steven R. Lechtenberg (NE)
 Joseph L. Mast (OR)
 Jesse R. McClary, Sr. (MO)
 Halman Smith (DE)
 Jerry W. Stanfill (AR)
 Scott C. Teich (MN)

The drivers were included in docket numbers FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2009–0206; FMCSA–2011–0057; and FMCSA–2011–0124. Their exemptions are applicable as of November 6, 2019, and will expire on November 6, 2021.

As of November 28, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (69 FR 33997; 69 FR 61292; 70 FR 48797; 70 FR 61493; 71 FR 55820; 72 FR 54971; 72 FR 58362; 72 FR 67344; 73 FR 65009; 74 FR 49069; 74 FR 57553; 76 FR 4413; 76 FR 70212; 80 FR 63869; 83 FR 3861):

Robert W. Bequeath (IA)
 Clarence N. Florey, Jr. (PA)
 Loren H. Geiken (SD)
 Michael A. Hershberger (OH)
 Patrick J. Hogan, Jr. (DE)
 Amilton T. Monteiro (MA)
 David G. Oakley (SC)
 Brent L. Seaux (LA)

The drivers were included in docket numbers FMCSA–2004–17984; FMCSA–2005–21711; and FMCSA–2007–29019. Their exemptions are applicable as of November 28, 2019, and will expire on November 28, 2021.

As of November 30, 2019, and in accordance with 49 U.S.C. 31136(e) and

31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 66 FR 63289; 68 FR 64944; 70 FR 67776; 72 FR 64273; 74 FR 62632; 76 FR 70215; 78 FR 64280; 80 FR 63869; 83 FR 3861):
 Terry J. Aldridge (MS)
 Jerry D. Bridges (TX)
 Gary R. Gutschow (WI)
 James J. Hewitt (WI)
 Thomas E. Walsh (CA)
 Kevin P. Weinhold (MA)

The drivers were included in docket numbers FMCSA–1999–5578; and FMCSA–1999–5748. Their exemptions are applicable as of November 30, 2019, and will expire on November 30, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 79 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in

§ 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: September 25, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019-21456 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-26367]

Motor Carrier Safety Advisory Committee; Charter Renewal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Announcement of Charter Renewal of the Motor Carrier Safety Advisory Committee (MCSAC).

SUMMARY: FMCSA announces the charter renewal of the MCSAC, a Federal advisory committee that provides the Agency with advice and recommendations on motor carrier safety programs and motor carrier safety regulations through a consensus process. This charter renewal will take effect on September 27, 2019, and will expire after 2 years.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 385-2395, mcsac@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 14 of the Federal Advisory Committee Act (Pub. L. 92-463), FMCSA is giving notice of the charter renewal for the MCSAC. The MCSAC was established to provide FMCSA with advice and recommendations on motor carrier safety programs and motor carrier safety regulations.

The MCSAC comprises up to 25 voting representatives from safety advocacy, safety enforcement, labor, and industry stakeholders of motor carrier safety. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the MCSAC website for details on pending tasks at <http://www.fmcsa.dot.gov/mcsac>.

Issued on: September 27, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019-21457 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2019-0004-N-17]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Requests (ICRs) abstracted below. Before submitting these ICRs to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before December 2, 2019.

ADDRESSES: Submit written comments on the ICRs activities by mail to either: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB Control Number 2130-XXXX," (the relevant OMB control number for each ICR is listed below) and should also include the title of the ICR. Alternatively, comments may be emailed to Ms. Wells at hodan.wells@dot.gov, or Ms. Toone at kim.toone@dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection

Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493-0440) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493-6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. See 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a "user-friendly" format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130-0534.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Accordingly, FRA's regulations require railroads to take specific responses in the event of

an activation failure (when a grade crossing warning system fails to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing or to indicate the presence of a train occupying the crossing). Specifically, railroads must report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving a crossing warning system activation failure. Notification must be provided to the

National Response Center within 24 hours of occurrence at the stipulated toll-free telephone number. Additionally, railroads must report to FRA within 15 days each activation failure of a highway-rail grade warning system. Form FRA F 6180.83, "Highway-Rail Grade Crossing Warning System Report," must be used for this purpose and completed using the instructions printed on the form. With this information, FRA can identify the causes of activation failures and investigate them to determine whether

periodic maintenance, inspection, and testing standards are effective.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses (railroads).

Form(s): FRA F 6180.83.

Respondent Universe: 746 railroads.

Frequency of Submission: On occasion/monthly.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent ¹
234.7—Accidents involving grade crossing signal failure—Telephone Notification.	746 railroads	2 phone calls	2 minutes .....	.1	\$7
234.9—Grade crossing signal system failure reports—Form 6180.83.	746 railroads	250 reports	10 minutes	42	2,856
234.105/106/107—Activation failure/partial activation/false activation—Notification to train crew and law enforcement due to credible report of warning system malfunction.	746 railroads	30,000 notifications	5 minutes	2,500	170,000
234.109—Recordkeeping	746 railroads	30,000 records	5 minutes	2,500	170,000
Total	746 railroads	60,252 responses	N/A	5,042	342,863

Total Estimated Annual Responses: 60,252.

Total Estimated Annual Burden: 5,042 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$342,863.

Title: Alleged Violation Reporting Form.

OMB Control Number: 2130-0590.

Abstract: The Alleged Violation Reporting Form is a response to section 307(b) of the Rail Safety Improvement Act of 2008 which requires FRA to

“provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration.” The Alleged Violation Reporting Form allows the general public to submit alleged violations directly to FRA. The form allows FRA to collect information necessary to investigate the alleged violation and to follow up with the submitting party. FRA may share the

information collected with FRA employees, State DOT partners, and law enforcement agencies.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: General public.

Form(s): FRA F 6180.151.

Respondent Universe: 1,000 individuals.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent ²
Alleged Violation Reporting Form (Form FRA F 6180.151)	1,000 individuals	570 forms	5 minutes	48	\$1,296

Total Estimated Annual Responses: 570.

Total Estimated Annual Burden: 48 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$1,296.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2019-21454 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

¹ The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group

hourly wage rate that includes 75-percent overhead charges.

² FRA used an hourly rate of \$27 for the value of the public's time. FRA obtained this data from the Department of Labor, Bureau of Labor Statistics.

OFAC: Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION: Case ID DPRK3-15706.

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On September 13, 2019 OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Entities

1. ANDARIEL, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

Identified as meeting the definition of the Government of North Korea as set forth in Section 9(d) of Executive Order 13722 because it is an agency, instrumentality, or controlled entity of the Government of North Korea.

2. BLUENOROFF (a.k.a. "APT 38"; a.k.a. "APT38"; a.k.a. "STARDUST CHOLLIMA"), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

Identified as meeting the definition of the Government of North Korea as set forth in Section 9(d) of Executive Order 13722 because it is an agency, instrumentality, or controlled entity of the Government of North Korea.

3. LAZARUS GROUP (a.k.a. "APPLEWORM"; a.k.a. "APT-C-26"; a.k.a. "GROUP 77"; a.k.a. "GUARDIANS OF PEACE"; a.k.a. "HIDDEN COBRA"; a.k.a. "OFFICE 91"; a.k.a. "RED DOT"; a.k.a. "TEMP.HERMIT"; a.k.a. "THE NEW ROMANTIC CYBER ARMY TEAM"; a.k.a. "WHOIS HACKING TEAM"; a.k.a. "ZINC"), Potonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

Identified as meeting the definition of the Government of North Korea as set forth in Section 9(d) of Executive Order 13722 because it is an agency, instrumentality, or controlled entity of the Government of North Korea.

Dated: September 13, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019-21340 Filed 10-1-19; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning updating of employer identification numbers.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317-5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Updating of Employer Identification Numbers.

OMB Number: 1545-2242.

Regulation Project Number: T.D. 9617.

Abstract: The collection of information in the final regulations is in § 301.6109-1(d)(2)(ii)(A). The collection of this information is necessary to allow the IRS to gather correct application information with respect to persons that have EINs. The respondents are persons that have EINs.

Current Actions: There are no changes being made to the regulation that would affect burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits, and not-for-profits.

Estimated Number of Respondents: 1,612,708.

Estimated Time per Respondent: .25 minutes.

Estimated Total Annual Burden Hours: 403,177 hours.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2019.

Philippe Thomas,
Supervisor Tax Analyst.

[FR Doc. 2019-21432 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099-H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Health Coverage Tax Credit (HCTC) Advance Payments.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal

Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC) Advance Payments.

OMB Number: 1545-1813.

Form Number: 1099-H.

Abstract: Form 1099-H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 49,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 14,700.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 2019.

Philippe Thomas,

Supervisory Tax Analyst.

[FR Doc. 2019-21434 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038-B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

OMB Number: 1545-2161.

Form Number: 8038-B.

Abstract: Form 8038-B has been developed to assist issuers of the new types of Build America and Recovery Zone Economic Development Bonds enacted under the American Recovery and Reinvestment Act of 2009 to capture information required by IRC section 149(e).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not for profit institutions.

Estimated Number of Respondents: 5,880.

Estimated Time per Respondent: 19 hours, 19 minutes.

Estimated Total Annual Burden

Hours: 113,661.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019-21425 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6478

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Biofuel Producer Credit.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Biofuel Producer Credit.

OMB Number: 1545-0231.

Form Number: 6478.

Abstract: Form 6478 is used to figure your section 40 biofuel producer credit. You claim the credit for the tax year in which the sale or use occurs. This credit consists of the second generation biofuel producer credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,300.

Estimated Time per Respondent: 4 hours, 36 minutes.

Estimated Total Annual Burden Hours: 13,233.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019-21428 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8282 and 8283

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8282, Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property) and Form 8283, Noncash Charitable Contributions.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property) (Form 8282) and Noncash Charitable Contributions (Form 8283).

OMB Number: 1545-0908.

Form Numbers: Form 8282 and 8283.

Abstract: Internal Revenue Code section 170(a)(1) and regulation section 1.170A-13(c) require donors of property valued over \$5,000 to file certain information with their tax return in order to receive the charitable contribution deduction. Form 8283 is used to report the required information. Code section 6050L requires donee organizations to file an information return with the IRS if they dispose of the property received within two years. Form 8282 is used for this purpose.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or household and Business or other for-profit organizations.

Form 8282

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 9 hours, 24 minutes.

Estimated Total Annual Burden Hours: 9,400.

Form 8283

Estimated Number of Respondents: 3,144,666.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 7,805,692.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 2019,

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019-21433 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning taxation and reporting of REIT excess inclusion income.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317-5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Taxation and Reporting of REIT Excess Inclusion Income.

OMB Number: 1545-2036.

Notice Number: Notice 2006-97.

Abstract: This notice requires certain REITs, RICS, partnerships and other entities that have excess inclusion

income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Current Actions: There are no changes being made to the notice that would affect burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100 hours.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019-21429 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning carryforward election of unused private activity bond volume cap.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317-5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

OMB Number: 1545-0874.

Form Number: Form 8328.

Abstract: Internal Revenue Code section 4146(f) requires that an annual volume limit be placed on the amount of private activity bonds issued by each State. Code section 146(f)(3) provides that the unused amount of the private activity bonds for specific programs can be carried forward for 3 years depending on the type of project. In order to carry forward the unused amount of the private activity bond, an irrevocable election can be made by the issuing authority. Form 8328 allows the issuer to execute the carryforward election.

Current Actions: There are no changes to the forms or regulations at his time. However, the agency is updating the number of respondents based on its most recent filing data.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, state, local, or tribal government.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 13 hours, 13 minutes.

Estimated Total Annual Burden Hours: 2,644 hours.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 16, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019-21427 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information returns for real estate mortgage investment conduits (REMICs) and issuers of collateralized debt obligations.

DATES: Written comments should be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317-5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

OMB Number: 1545-1099.

Form Number: Form 8811.

Abstract: Current regulations require real estate mortgage investment conduits (REMICs) to provide Forms 1099 to true holders of interests in these investment vehicles. Because of the complex computations required at each level and the potential number of nominees, the ultimate investor may not receive a Form 1099 and other information necessary to prepare their tax return in a timely fashion. Form 8811 collects information for publishing by the IRS so that brokers can contact REMICs to request the financial information and timely issue Forms 1099 to holders.

Current Actions: There are no changes being made to the form or burden estimates at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 4 hours, 23 minutes.

Estimated Total Annual Burden Hours: 4,380 hours.

The following paragraph applies to all of 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 as long as 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.

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: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 16, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019-21435 Filed 10-1-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0568]

Agency Information Collection Activity: Submission of School Catalog to the State Approving Agency

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 2, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0568" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421-1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Title 38 CFR, sections 21.4253 and 21.4254, restates this statutory requirement in the Code of Federal Regulations, and Title 38 U.S.C. 3676.

Title: Submission of School Catalog to the State Approving Agency (VA Form = No Form).

OMB Control Number: 2900-0568.

Type of Review: Revision of a currently approved collection.

Abstract: State approving agencies and VA use the catalogs to determine what courses can be approved for VA training. VA receives catalogs when institutions change their education programs. In general, the catalogs are collected approximately once a year. Without this information, VA and the State approving agencies cannot determine what courses could be approved.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,582 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,330.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2019-21463 Filed 10-1-19; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

Vol. 84

Wednesday,

No. 191

October 2, 2019

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR 17

Endangered and Threatened Wildlife; Endangered Species Status for Southern Mountain Caribou Distinct Population Segment; Final Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**[Docket No. FWS-R1-ES-2012-0097;
FXES1113090000C2-189-FF09E42000]

RIN 1018-BC84

**Endangered and Threatened Wildlife;
Endangered Species Status for
Southern Mountain Caribou Distinct
Population Segment****AGENCY:** Fish and Wildlife Service,
Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973, as amended (Act), for the southern mountain caribou distinct population segment (DPS) of woodland caribou (*Rangifer tarandus caribou*). This determination amends the current listing of the southern Selkirk Mountains population of woodland caribou by defining the southern mountain caribou DPS. The southern mountain caribou DPS of woodland caribou consists of 17 subpopulations (15 extant and 2 extirpated). This DPS includes the currently listed southern Selkirk Mountains population of woodland caribou, a transboundary population that moves between British Columbia, Canada, and northern Idaho and northeastern Washington, United States. We have determined that the approximately 30,010 acres (12,145 hectares) designated as critical habitat on November 28, 2012, for the southern Selkirk Mountains population of woodland caribou is applicable to the U.S. portion of the endangered southern mountain caribou DPS and, as such, reaffirm the existing critical habitat for the DPS. This rule amends the listing of this DPS on the Federal List of Endangered and Threatened Wildlife.

DATES: This rule is effective November 1, 2019.

ADDRESSES: This final rule is available at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2012-0097, and at the Service's Idaho Fish and Wildlife Office at <http://www.fws.gov/idaho/>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. All of the comments, materials, and documentation that we considered in this rulemaking are available by

appointment, during normal business hours at: U.S. Fish and Wildlife Service, Northern Idaho Field Office, 11103 E. Montgomery Drive, Spokane Valley, WA 99206; telephone 509-891-6839; facsimile 509-891-6748.

FOR FURTHER INFORMATION CONTACT: Greg Hughes, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208-378-5243; facsimile 208-378-5262. Persons who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8339 for TTY (telephone typewriter or teletypewriter) assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Why we need to publish a rule. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by rulemaking. Any proposed or final rule designating a DPS as endangered or threatened under the Act should clearly analyze the action using the following three elements: discreteness of the population segment in relation to the remainder of the taxon to which it belongs; the significance of the population segment to the taxon to which it belongs; and the conservation status of the population segment in relation to the Act's standards for listing (DPS policy; 61 FR 4722, February 7, 1996). Under the Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed through rulemaking. Here we reaffirm the designation of approximately 30,010 acres (ac) (12,145 hectares (ha)) in one unit within Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the southern mountain caribou DPS.

This rule amends the current listing of the southern Selkirk Mountains population of woodland caribou as follows:

- By defining the southern mountain caribou DPS, which includes the currently listed southern Selkirk Mountains population of woodland caribou;
- By designating the status of the southern mountain caribou DPS as endangered under the Act; and

- By reaffirming the designation of approximately 30,010 ac (12,145 ha) as critical habitat for the southern mountain caribou DPS.

The basis for our action. Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of "endangered species" or "threatened species." The Act defines an "endangered species" as a species that is "in danger of extinction throughout all or a significant portion of its range," and a "threatened species" as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Under the Act, a species may be determined to be an endangered species or threatened species because of any one or a combination of the five factors described in section 4(a)(1): (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; and (E) other natural or manmade factors affecting its continued existence. We have determined that threats described under factors A, C, and E pose significant threats to the continued existence of the southern mountain caribou DPS.

We listed the southern Selkirk Mountains population of woodland caribou as endangered under the Act on February 29, 1984 (49 FR 7390). According to our "Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act" (DPS policy; 61 FR 4722, February 7, 1996), the appropriate application of the policy to pre-1996 DPS listings shall be considered in our 5-year reviews of the status of the species. We conducted a DPS analysis during our 2008 5-year review, which concluded that the southern Selkirk Mountains population of woodland caribou met both the discreteness and significance elements of the DPS policy. However, we now recognize that this analysis did not consider the significance of this population relative to the appropriate taxon. The purpose of the DPS policy is to set forth standards for determining which populations of vertebrate organisms that are subsets of species or subspecies may qualify as entities that we may list as endangered or threatened under the Act. In the 2008 5-year review, we assessed the significance of the southern Selkirk Mountains

population to the “mountain ecotype” of woodland caribou. The “mountain ecotype” is neither a species nor a subspecies. The appropriate DPS analysis for the southern Selkirk Mountains population of woodland caribou should have been conducted relative to the subspecies woodland caribou (*Rangifer tarandus caribou*). Listing or reclassifying DPSs allows the Service to protect and conserve species and the ecosystems upon which they depend before large-scale decline occurs that would necessitate listing a species or subspecies throughout its entire range.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our amended listing proposal. We also considered all comments and information we received during the comment period.

Summary of Changes From the Proposed Rule

Based on information we received in comments regarding how we described the coat color of caribou during breeding and winter, we modified our description to reflect that caribou coat color and pattern is variable (Geist 2007) and winter pelage varies from almost white to dark brown (see *Species Information* under Background, below).

In our May 8, 2014, proposed rule (79 FR 26504), we noted that woodland caribou populations can be further broken down into subunits called “local populations.” The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (2014, entire) uses the term “subpopulation” to refer to the same population subunits in Canada. In order to minimize confusion, we have conformed our terminology to that used by COSEWIC. Therefore, our proposed rule uses “subpopulations,” instead of “local populations,” to describe caribou subunits.

Caribou subpopulations represent groupings of individual woodland caribou that have overlapping ranges/movement patterns and breed with one another more frequently than they breed with caribou from other subpopulations. Subpopulations in southern British Columbia are thought to be a relatively recent phenomena resulting from habitat fragmentation and loss within the population of woodland caribou; historically, movement of caribou between subpopulations was likely.

Within the Status of the Southern Mountain Caribou DPS discussion in this final rule, we provide clarification

on the number and names of subpopulations (both extant and recently extirpated) within the DPS, and describe how subpopulation names and groupings of subpopulations by Canada have changed through time. We also clarify that the range of the DPS in British Columbia, Canada, and the United States has declined by 60 percent since historical arrival of Europeans in British Columbia, according to Spalding (2000, p. 40). In our May 8, 2014 proposed rule (79 FR 26504), we stated the range of the DPS had declined by 40 percent, but this was specific to the British Columbia, Canada, portion of the DPS's range (*i.e.*, it did not include the portion of the range in the United States).

We updated the status of the southern mountain caribou DPS to reflect the most recent information contained in the COSEWIC report (2014, entire) pertaining to the number of individual caribou in each of the 15 extant subpopulations and the total estimated number of individuals in the DPS. We corrected the trend status of the Hart Ranges subpopulation to reflect that it is now declining, and to reflect that the overall trend of the DPS is declining and the rate of decline is accelerating. We also included additional information pertaining to population viability analyses conducted by Hatter (2006, entire, *in litt.*) and Wittmer (2010, entire) assessing the extinction risk of subpopulations within the DPS.

We provided additional analysis pertaining to the isolation of subpopulations within the DPS as well as separation from other populations (*i.e.*, Designatable Units) of woodland caribou in Canada. We explained how this isolation may affect the ability of the subpopulations within the DPS to function as a metapopulation, which could adversely affect the demographic and/or genetic stability or rescue of subpopulations within the DPS. We also provided additional analyses on potential threats to the DPS related to renewable energy and industrial development, and effect of predation upon the current and future status of the DPS.

We included additional information pertaining to Canadian conservation efforts for woodland caribou, which include augmenting animals into the Purcells South subpopulation and wolf control efforts within several subpopulations within the DPS (under the Factor A analysis, below, see *Efforts in Canada* under “Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailement of Its Range”). We also included additional information pertaining to existing

regulations enacted by the British Columbia provincial government that can be utilized to protect southern mountain caribou and their habitat, as well as implementing programs and projects for their conservation (see “Canada” under Factor D analysis, below).

In our May 8, 2014, proposed rule (79 FR 26504), we stated that further evaluation of existing regulatory mechanisms (Factor D) was needed before a final determination could be made as to the adequacy of existing regulatory mechanisms to address the threats affecting the status of the DPS. Notwithstanding the additional information learned regarding existing provincial laws and regulations of British Columbia, Canada, we conclude that, while the existing regulatory mechanisms in the United States and Canada enable the United States and Canada to ameliorate to some extent the identified threats to the southern mountain caribou DPS, the existing mechanisms do not completely alleviate the potential for the identified threats to affect the status of southern mountain caribou and their habitat.

In our May 8, 2014, proposed rule (79 FR 26504), we proposed to list the southern mountain caribou DPS as threatened. However, we have now determined that the status of, and threats to, the southern mountain caribou DPS warrant its listing as endangered. This determination is based on (1) the additional analysis referenced above and contained in the Status of the Southern Mountain Caribou DPS discussion below; and (2) the discussions of factors A (the present or threatened destruction, modification, or curtailment of its habitat or range), C (disease or predation), D (inadequacy of regulatory mechanisms) and E (other natural or manmade factors affecting its continued existence) in this final rule. The rationale for endangered status is summarized within the Determination section of this final rule. The May 8, 2014, proposed rule also contained a “Significant Portion of the Range” (SPR) analysis. That analysis was included in the proposed rule to conform to Service policy for listing rules at that time. However, subsequent to publishing the proposed rule, the Service revised its policy on when it is necessary to perform a SPR analysis (79 FR 37578, July 1, 2014).

In this case, because we found that the southern mountain DPS of woodland caribou is in danger of extinction throughout all of its range, per the Service's SPR Policy (79 FR 37578, July 1, 2014), the protections of the Act apply to each individual

member of the DPS wherever found. Consequently, an analysis of whether there is any significant portion of its range where the species is in danger of extinction or likely to become so in the foreseeable future was unnecessary and was not conducted.

Background

Previous Federal Actions

Please refer to the proposed amended listing rule for the southern mountain caribou DPS (79 FR 26504; May 8, 2014) for a detailed description of previous Federal actions concerning this species. The May 8, 2014, proposed rule opened a 60-day public comment period, ending July 7, 2014. On June 10, 2014, we extended the public comment period on the proposed amended listing rule until August 6, 2014, and announced two public informational sessions and hearings (79 FR 33169). Public informational sessions and hearings were held in Sandpoint, Idaho, on June 25, 2014, and in Bonners Ferry, Idaho, on June 26, 2014 (79 FR 33169). On March 24, 2015, we reopened the public comment period on the proposed amended listing rule for an additional 30 days, ending on April 23, 2015, to allow the public time to review new information: A report from COSEWIC¹ and associated literature, which we received after the previous public comment period (80 FR 15545).

In our May 8, 2014, proposed rule (79 FR 26504), we proposed to reaffirm the November 28, 2012, final critical habitat designation (77 FR 71042) for the southern Selkirk Mountains population of woodland caribou as it applies to the U.S. portion of the endangered southern mountain DPS of woodland caribou. However, on March 23, 2015, the Idaho District Court (*Center for Biological Diversity v. Kelly*, 93 F.Supp.3d 1193 (D. Idaho, 2015)) ruled that we made a procedural error in not providing public review and comment regarding considerations we made related to our final critical habitat designation (77 FR 71042). On April 19, 2016, in response to the court's order, we published a document in the **Federal Register** (81 FR 22961) that reopened the public comment period on the November 28, 2012, final designation of critical habitat (77 FR 71042), which we proposed to reaffirm in the May 8, 2014, proposed rule (79 FR 26504) as the critical habitat for the southern mountain caribou DPS. We received numerous comments regarding critical habitat during the initial public comment periods for the

proposed amended listing rule; we are addressing those comments in this final rule as well as new comments we received during the reopened public comment period on the November 28, 2012, final critical habitat designation.

Species Information

Please refer to the proposed listing rule for the southern mountain caribou DPS (79 FR 26504; May 8, 2014) for a summary of species information. Except for the following correction, there are no changes to the species information provided in that proposed rule. The sentence reading, "Their winter pelage varies from nearly white in Arctic caribou such as the Peary caribou, to dark brown in woodland caribou (COSEWIC 2011, pp. 10–11)" at 79 FR 26507 should instead read, "Breeding pelage is variable in color and patterning (Geist 2007), and winter pelage varies from almost white to dark brown."

Evaluation of the Southern Mountain Caribou as a Distinct Population Segment

Introduction and Background

The National Marine Fisheries Service (NMFS) and the Service published a joint "Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act" (DPS Policy) on February 7, 1996 (61 FR 4722). According to the DPS policy, any proposed or final rule designating a DPS as endangered or threatened under the Act should clearly analyze the action using the following three elements: Discreteness of the population segment in relation to the remainder of the taxon to which it belongs; the significance of the population segment to the taxon to which it belongs; and the conservation status of the population segment in relation to the Act's standards for listing. If the population segment qualifies as a DPS, the conservation status of that DPS is then evaluated to determine whether it is endangered or threatened.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If a population is found to be discrete, then it is evaluated for significance under the DPS policy on the basis of its importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the population represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside of its historical range; or (4) evidence that the population differs markedly from other populations of the species in its genetic characteristics.

If a population segment is both discrete *and* significant (*i.e.*, it qualifies as a potential DPS), its evaluation for endangered or threatened status is based on the Act's definitions of those terms and a review of the factors listed in section 4(a) of the Act. According to our DPS policy, it may be appropriate to assign different classifications to different DPSs of the same vertebrate taxon.

Section 3(16) of the Act defines the term "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." We have always understood the phrase "interbreeds when mature" to mean that a DPS must consist of members of the same species or subspecies in the wild that would be biologically capable of interbreeding if given the opportunity, but all members need not actually interbreed with each other. A DPS is a subset of a species or subspecies, and cannot consist of members of a different species or subspecies. A DPS may include multiple populations of vertebrate organisms that may not necessarily interbreed with each other. For example, a DPS may consist of multiple populations of a fish species separated into different drainages. While these populations may not actually interbreed with each other, their members are biologically capable of interbreeding.

Distinctive, discrete, and significant populations of the woodland caribou have been identified, described, and assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). COSEWIC is composed of qualified wildlife experts drawn from Federal, provincial, and territorial governments; wildlife management boards; Aboriginal groups; universities;

¹ A list of acronyms used in this document is available at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2012-0097.

museums; national nongovernmental organizations; and others with expertise in the conservation of wildlife species in Canada. The role of COSEWIC is to assess and classify, using the best available information, the conservation status of wildlife species, subspecies, and separate populations suspected of being at risk. In addition, they make species status recommendations to the Canadian government and the public. Once COSEWIC makes this recommendation, it is the option of the Canadian Federal government to decide whether a species will be listed under Canada's Species At Risk Act (SARA). The southern mountain caribou population, which includes the transboundary southern Selkirk Mountains population of woodland caribou (and is the subject of this final amended listing), is currently designated as "threatened" under SARA (COSEWIC 2011, p. 74). This designation was reached because the population of southern mountain caribou is mostly made up of small, increasingly isolated herds (most of which are in decline) with an estimated range reduction of up to 40 percent from their historical range (COSEWIC 2002, p. 58; COSEWIC 2011, p. 74).

In August 2014, COSEWIC, in accordance with SARA, submitted its assessment to the Canadian Federal Environment Minister for consideration of changing the legal status of the southern mountain caribou in Canada under SARA to endangered (COSEWIC 2014, p. iv). The recommended change in the legal status under SARA is pending review and decision by the Federal Environment Minister.

Because we now consider the southern Selkirk Mountains population of woodland caribou part of the larger southern mountain caribou population, as recognized by COSEWIC (2011, entire), we recognize that our evaluation of the southern Selkirk Mountains population is more appropriately conducted at the scale of the larger southern mountain caribou population. Therefore, below we evaluate whether, under our DPS policy, the southern mountain caribou population segment (*i.e.*, 15 extant and 2 extirpated subpopulations) of woodland caribou occurring in British Columbia, Canada, and northeastern Washington and northern Idaho, United States, qualifies as a DPS under the Act.

We completed a 5-year review of the endangered southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) in 2008 (USFWS 2008). Because this population was listed prior to the Service's 1996 DPS policy (61 FR 4722; February 7,

1996), the 5-year review included an analysis of this population in relation to the DPS policy. In conducting the DPS analysis, we considered the discreteness and significance of this population in relation to the mountain caribou metapopulation (USFWS 2008, pp. 6–13) (*i.e.*, mountain caribou ecotype). From this analysis, we concluded that the southern Selkirk Mountains population of woodland caribou met both the discreteness and significance elements of the DPS policy and was a distinct population segment of the mountain caribou metapopulation (USFWS 2008, p. 13). However, we acknowledged in our December 19, 2012, 90-day finding (77 FR 75091) on a petition to delist the southern Selkirk Mountains population of woodland caribou that the DPS analysis in our 2008 5-year review was not conducted relative to the appropriate taxon. Specifically, we should have conducted the DPS analysis of the southern Selkirk Mountains population of woodland caribou relative to the woodland caribou subspecies (*Rangifer tarandus caribou*) instead of the mountain caribou metapopulation.

For this final amended listing and DPS analysis of the southern mountain population of woodland caribou to the subspecies woodland caribou, we reviewed and evaluated information contained in numerous publications and reports, including, but not limited to: Banfield 1961; Stevenson *et al.* 2001; COSEWIC 2002, 2011, 2014; Cichowski *et al.* 2004; Wittmer *et al.* 2005b, 2010; Hatter 2006, *in litt.*; Geist 2007; van Oort *et al.* 2011; and Serrouya *et al.* 2012.

In 2002 and 2011, COSEWIC completed status assessments of caribou subspecies and species populations in North America. The 2002 COSEWIC Report evaluated woodland caribou "nationally significant populations" (NSPs). The more recent COSEWIC (2011) Report described "Designatable Units" (DUs) as the appropriate "discrete and significant units" useful to conserve and manage caribou populations throughout Canada. Information used in COSEWIC's 2011 report is useful to our DPS analysis. Canada's DUs are identified based on the criteria that there are "discrete and evolutionarily significant units of a taxonomic species, where 'significant' means that the unit is important to the evolutionary legacy of the species as a whole and if lost, would likely not be replaced through natural dispersion" (COSEWIC 2011, p. 14). They consider a population or group of populations to be "discrete" based on the following criteria: distinctiveness in genetic characteristics or inherited traits, habitat

discontinuity, or ecological isolation (COSEWIC 2011, p. 15).

It should be noted that COSEWIC's DU designation does not necessarily consider the conservation status or threats to the persistence of caribou DUs. Consistent with its 2009 guidelines, the COSEWIC used five lines of evidence to determine caribou DUs; these include: (1) Phylogenetics; (2) genetic diversity and structure; (3) morphology; (4) movements, behavior, and life-history strategies; and (5) distribution (COSEWIC 2011, p. 15). As a general rule, a DU was designated when several lines of evidence provided support for discreteness and significance (COSEWIC 2011, pp. 15–16). Twelve caribou DUs were classified by COSEWIC in 2011, including the southern mountain caribou population (DU9), which includes the southern Selkirk Mountains population of woodland caribou (COSEWIC 2011, p. 21). The information used to describe the southern mountain DU is reviewed and evaluated in our DPS analysis, as it includes numerous local woodland caribou populations that all possess similar and unique foraging, migration, and habitat use behaviors, and that are geographically separated from other caribou DUs.

Discreteness

As outlined in our 1996 DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

I. Physical (Geographic) Discreteness

The southern Selkirk Mountains population of woodland caribou is 1 of 17 woodland caribou subpopulations (15 extant, 2 extirpated) (COSEWIC 2014, p. xix) that share distinct foraging, migration, and habitat use behaviors. These subpopulations are all located in steep, mountainous terrain in central and southeastern British Columbia, Canada, and in extreme northeastern Washington and northern Idaho, United States. Little to no dispersal has been detected between these subpopulations and other caribou populations/subpopulations outside this geographic area (Wittmer *et al.* 2005b, pp. 408, 409; COSEWIC 2011, p. 49; van Oort *et al.*

2011, pp. 222–223), indicating that mountain caribou appear to lack the inherent behavior to disperse long distances (van Oort, *et al.* 2011, pp. 215, 221–222). For the purposes of this DPS analysis, this collection of woodland caribou subpopulations, which, as noted above, includes the southern Selkirk Mountains population, constitutes the southern mountain population of caribou; we also refer to it herein as “southern mountain caribou.”

Telemetry research by Wittmer *et al.* (2005b) and van Oort *et al.* (2011) supports the physical (geographic) discreteness of southern mountain caribou. One exception is that there is some limited annual range overlap between a few local caribou populations at the far north of the southern mountain caribou population. Although all caribou and reindeer worldwide are considered to be the same species (*Rangifer tarandus*) and are presumed able to interbreed and produce offspring (COSEWIC 2002, p. 9), the distribution of the southern mountain caribou does not overlap with other caribou populations during the rut or mating season (COSEWIC 2011, p. 50). Previous telemetry studies were completed by Apps and McLellan (2006, pp. 84–85, 92) to determine occupancy across differing landscapes. These studies confirmed that woodland caribou within the geographic area that defines the southern mountain caribou population are strongly associated with the steep, mountainous terrain characterizing the “interior wet-belt” of British Columbia (Stevenson *et al.* 2001, p. 3), located west of the continental divide. This area is influenced by Pacific air masses that produce the wettest climate in the interior of British Columbia (Stevenson *et al.* 2001, p. 3). Forests consist of Engelmann spruce (*Picea engelmannii* or *P. glauca* x *engelmannii*)/subalpine fir (*Abies lasiocarpa*) at high elevation, and western red cedar (*Thuja plicata*)/western hemlock (*Tsuga heterophylla*) at lower elevations. Snowpack typically averages 5 to 16 feet (ft) (2 to 5 meters (m)) in depth (Stevenson *et al.* 2001, p. 4; COSEWIC 2011, p. 50). Apps and McLellan (2006, p. 92) noted that the steep, complex topography within the interior wet-belt provides seasonally important habitats. Caribou access this habitat by migrating in elevational shifts rather than through the long horizontal migrations of other subspecies in northern Canada. Woodland caribou that live within this interior wet-belt of southern British Columbia, northeastern Washington, and northern Idaho are strongly associated with old-growth

forested landscapes (Apps *et al.* 2001, pp. 65, 70). These landscapes are predominantly cedar/hemlock and spruce/subalpine fir composition (Stevenson *et al.* 2001, pp. 3–5; Apps and McLellan 2006, pp. 84, 91; Cichowski *et al.* 2004, pp. 224, 231; COSEWIC 2011, p. 50) that supports woodland caribou’s late-winter diet consisting almost entirely of arboreal hair lichens (Cichowski *et al.* 2004, p. 229).

The southern mountain caribou population is markedly separate from other populations of woodland caribou as a result of physical (geographic) factors. The distribution of this population is primarily located within the interior wet-belt of southern British Columbia, occurring west of the continental divide and generally south of Reynolds Creek (which is about 90 miles (mi) (150 kilometers (km)) north of Prince George, British Columbia). Its geographic range is such that it does not reproduce with other subpopulations of woodland caribou.

II. Behavioral Discreteness

In addition to being physically (geographically) discrete, individuals within the southern mountain caribou population are behaviorally distinguished from woodland caribou in other populations (including the neighboring Northern Mountain and Central Mountain populations). Southern mountain caribou uniquely use steep, high-elevation, mountainous habitats with deep snowfall (about 5 to 16 ft (2 to 5 m)) (COSEWIC 2011, p. 50), and, as described below, are the only woodland caribou that depend on arboreal lichens for forage. This habitat use contrasts with the behavior of other woodland caribou, which occupy relatively drier habitats that receive less snowfall. With less snowfall in these areas, these woodland caribou primarily forage on terrestrial lichens, accessing them by “cratering” or digging through the snow with their hooves (Thomas *et al.* 1996, p. 339; COSEWIC 2002, pp. 25, 27).

Extreme, deep snow conditions have led to a foraging strategy by the southern mountain caribou that is unique among woodland caribou. They rely exclusively on arboreal (tree) lichens for 3 or more months of the year (Servheen and Lyon 1989, p. 235; Edmonds 1991, p. 91; Stevenson *et al.* 2001, p. 1; Cichowski *et al.* 2004, pp. 224, 230–231; MCST 2005, p. 2; COSEWIC 2011, p. 50). Arboreal lichens are a critical winter food for the southern mountain caribou from November to May (Servheen and Lyon 1989, p. 235; Stevenson *et al.* 2001, p. 1; Cichowski

et al. 2004, p. 233). During this time, a southern mountain caribou’s diet can be composed almost entirely of these lichens. Arboreal lichens are pulled from the branches of conifers, picked from the surface of the snow after being blown out of trees by wind, or are grazed from wind-thrown branches and trees. The two kinds of arboreal lichens commonly eaten by the southern mountain caribou are *Bryoria* spp. and *Alectoria sarmentosa*. Both are extremely slow-growing lichens most commonly found in high-elevation, old-growth conifer forests that are greater than 250 years old (Paquet 1997, p. 14; Apps *et al.* 2001, pp. 65–66).

Another unique behavior of caribou within the southern mountain caribou population is their altitudinal migrations. They may undertake as many as four of these migrations per year (COSEWIC 2011, p. 50). After wintering at high elevations as described above, at the onset of spring, these caribou move to lower elevations where snow has melted to forage on new green vegetation (Paquet 1997, p. 16; Mountain Caribou Technical Advisory Committee (MCTAC) 2002, p. 11). Pregnant females will move to these spring habitats for forage. During the calving season, sometime from June into July, the need to avoid predators influences habitat selection. Areas selected for calving are typically high-elevation, alpine and non-forested areas in close proximity to old-growth forest ridge tops, as well as high-elevation basins. These high-elevation sites can be food limited, but are more likely to be free of predators (USFWS 1994a, p. 8; MCTAC 2002, p. 11; Cichowski *et al.* 2004, p. 232; Kinley and Apps 2007, p. 16). During calving, arboreal lichens become the primary food source for pregnant females at these elevations. This is because green forage is largely unavailable in these secluded, old-growth conifer habitats.

During summer months, southern mountain caribou move back to upper-elevation spruce/alpine fir forests (Paquet 1997, p. 16). Summer diets include selective foraging of grasses, flowering plants, horsetails, willow and dwarf birch leaves and tips, sedges, lichens (Paquet 1997, pp. 13, 16), and huckleberry leaves (U.S. Forest Service (USFS) 2004, p. 18). The fall and early winter diet consists largely of dried grasses, sedges, willow and dwarf birch tips, and arboreal lichens.

The southern mountain caribou are behaviorally adapted to the steep, high-elevation, mountainous habitat with deep snowpack. They feed almost exclusively on arboreal lichens for 3 or more months out of the year. They are

also reproductively isolated, due to their behavior and separation from other caribou populations during the fall rut and mating season (COSEWIC 2011, p. 50). Based on these unique adaptations, we consider the southern mountain caribou population to meet the behavioral “discreteness” standard in our DPS policy.

III. Genetic Discreteness

Data from Serrouya *et al.* (2012, p. 2,594) show that genetic population structure (*i.e.*, patterning or clustering of the genetic make-up of individuals within a population) does exist within woodland caribou. Specifically, Serrouya revealed a genetic cluster that is unique to southern mountain caribou and different from genetic clusters found in surrounding subpopulations of woodland caribou designated as part of other Canada caribou DUs (*i.e.*, Central Mountain DU, Northern Mountain DU, and Boreal DU). However, Serrouya also revealed genetic clusters that occur in both the southern mountain caribou and neighboring DUs that suggest some historical gene flow did occur in the past, meaning that historically, caribou moved between populations of these DUs and interbred when mature.

This cluster overlap of DU boundaries is not surprising, as genetic structure is reflective of long-term historical population dynamics and does not necessarily depict current gene flow. Indeed, it does appear that recent impediments to gene flow may be genetically isolating woodland caribou in the southwest portion of their range (Wittmer *et al.* 2005b, p. 414; van Oort *et al.* 2011, p. 221; Serrouya *et al.* 2012, p. 2,598). These impediments include anthropogenic habitat fragmentation and widespread caribou population declines. Therefore, genetic specialization related to unique behaviors and habitat use may represent a relatively recent life-history characteristic (Weckworth *et al.* 2012, p. 3,620). Historical gene flow between subpopulations of southern mountain caribou and neighboring subpopulations did occur in the past. However, study results from Serrouya *et al.* (2012), combined with telemetry data from Wittmer *et al.* (2005b, p. 414) and van Oort *et al.* (2011, p. 221), suggest that isolation of subpopulations is now the norm, effecting some genetic differentiation of these subpopulations through genetic drift (Serrouya *et al.* 2012, p. 2,597).

A certain level of genetic differentiation does exist between the southern mountain caribou population and neighboring woodland caribou. However, we do not presently consider

there to be sufficient evidence to determine that the southern mountain caribou are genetically isolated from other populations of caribou, particularly the Central Mountain population. Therefore, at this time, we do not find that this population meets the genetic “discreteness” standard in our DPS policy.

IV. Discreteness Conclusion

In summary, we determine that the best available information indicates that the southern mountain caribou, comprised of 17 woodland caribou subpopulations (15 extant and 2 extirpated) that occur in southern British Columbia, northeastern Washington, and northern Idaho, is markedly separated from all other populations of woodland caribou. The southern mountain caribou population is physically (geographically), behaviorally, and reproductively isolated from other woodland caribou. Therefore, we consider the southern mountain caribou population to be discrete per our DPS policy.

Significance

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. Significance is not determined by a quantitative analysis, but is instead a qualitative finding. It will vary from species to species and cannot be reduced to a simple formula or flat percentage. Our DPS policy provides several potential considerations that may demonstrate the significance of a population segment to the species to which it belongs. These considerations include, but are not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the discrete population segment differs markedly from other population segments in its genetic characteristics; (3) evidence that the population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon. The following discussion addresses considerations regarding the significance of the southern mountain caribou population to the subspecies woodland caribou (*Rangifer tarandus caribou*).

I. Persistence of the Discrete Population Segment in an Ecological Setting Unusual or Unique for the Taxon

As previously discussed, woodland caribou within the southern mountain caribou population are distinguished from woodland caribou in other areas. Southern mountain caribou live in, and are behaviorally adapted to, a unique ecological setting characterized by high-elevation, high-precipitation, and steep old-growth conifer forests that support abundant arboreal lichens (COSEWIC 2011, p. 50). In addition, all woodland caribou in the southern mountain caribou population exhibit a distinct behavior. Specifically, they spend the winter months in high-elevation, steep, mountainous habitats where individuals stand on the deep, hard-crusted snowpack and feed exclusively on arboreal lichens on standing or fallen old-growth conifer trees (Cichowski *et al.* 2004, pp. 224, 230–231; MCST 2005, p. 2; COSEWIC 2011, p. 50). This behavior is unlike that of woodland caribou in neighboring areas that occupy less steep, drier terrain and do not feed on arboreal lichens during the winter (Thomas *et al.* 1996, p. 339; COSEWIC 2011, p. 50).

In addition to persisting in a specific environment characterized by steep, high-elevation, old-growth forests and being reliant on arboreal lichens as primary winter forage, caribou of the southern mountain population make relatively short-distance altitudinal migrations up to four times per year. These caribou occupy valley bottoms and lower slopes in the early winter, and ridge tops and upper slopes in later winter after the snowpack deepens and hardens. In the spring, they move to lower elevations again to access green vegetation. Females make solitary movements back to high elevations to calve. This habitat and behavior are unique to the southern mountain caribou population. All other populations within the woodland caribou subspecies occupy winter habitat characterized by gentler topography, lower elevation, and less winter snowpack (COSEWIC 2011, pp. 43, 46) where their primary winter forage, terrestrial (ground) lichens, is most accessible (Thomas *et al.* 1996, p. 339; COSEWIC 2011, pp. 43, 46). Unlike woodland caribou of the southern mountain population, some populations in eastern Canada (Eastern Migratory DU (DU4; COSEWIC 2011, p. 34)) will migrate relatively long distances across the landscape between wintering and calving habitat, where they will calve in large aggregated groups (COSEWIC

2011, pp., 33, 37; Abraham *et al.* 2012, p. 274).

We conclude that the southern mountain caribou meets the definition of significant in accordance with our DPS policy, as this population currently persists in an ecological setting unusual or unique for the subspecies of woodland caribou.

II. Evidence That the Discrete Population Segment Differs Markedly From Other Population Segments in Its Genetic Characteristics

Research by Serrouya *et al.* (2012, p. 2594) indicates that there is some genetic population structure between woodland caribou populations in western North America. This research identified two main genetic clusters within the southern mountain caribou, separated from each other by the North Thompson Valley in British Columbia. One of these clusters is unique, with few exceptions, to the southern mountain caribou (structure analysis; Serrouya *et al.* 2012, p. 2594). The other cluster, northwest of the North Thompson Valley, is shared with the adjacent Central Mountain population. As such, there is limited genetic evidence in this study that southern mountain caribou populations north of the North Thompson Valley are genetically unique relative to caribou of the Central Mountain population.

As previously discussed, the best available information indicates that recent impediments to gene flow such as habitat fragmentation and widespread caribou population declines may be genetically isolating woodland caribou in the southwestern portion of their range (Wittmer *et al.* 2005b, p. 414; van Oort *et al.* 2011, p. 221; Serrouya *et al.* 2012, p. 2,598). This genetic isolation has resulted in unique behaviors and habitat use (Weckworth *et al.* 2012, p. 3,620). Study results from Serrouya *et al.* (2012), combined with telemetry data from Wittmer *et al.* (2005b, p. 414) and van Oort *et al.* (2011, p. 221), suggest that while historical gene flow between subpopulations of southern mountain caribou and neighboring subpopulations did occur in the past, isolation of these subpopulations is now the norm. Research into the genetics of the woodland caribou will likely continue and will provide further insight into gene flow between these populations.

Despite some level of genetic differentiation between the southern mountain caribou population and neighboring woodland caribou, and a predicted continuation of genetic differentiation between subpopulations within southern mountain caribou, we do not presently consider southern

mountain caribou “genetically unique.” Therefore, at this time we do not find this population meets the genetic “significance” standard in our DPS policy.

III. Evidence That the Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historic Range

All caribou in the world are one species (*Rangifer tarandus*). In a global review of taxonomy of the genus *Rangifer*, Banfield (1961) documented the occurrence of five subspecies in North America. Woodland caribou (*Rangifer tarandus caribou*), one of the five recognized subspecies of caribou, are the southern-most subspecies in North America. The range of woodland caribou extends in an east/west band from eastern Newfoundland and northern Quebec, all the way into western British Columbia. Southern mountain caribou represent a discrete subset of this subspecies. Because southern mountain caribou are not the only surviving natural occurrence of the woodland caribou subspecies, this element is not applicable.

IV. Evidence That Loss of the Discrete Population Segment Would Result in a Significant Gap in the Range of the Taxon

Historically, woodland caribou were widely distributed throughout portions of the northern tier of the coterminous United States from Washington to Maine, as well as throughout most of southern Canada (COSEWIC 2002, p. 19). However, as a result of habitat loss and fragmentation, overhunting, and the effects of predation, the population of woodland caribou within the British Columbia portion of their range has declined dramatically with an estimated 40 percent range reduction (COSEWIC 2002, p. 20). Additionally, Hatter (pers. comm. as cited in Spalding 2000, p. 40) estimated that the range of southern mountain caribou has declined by approximately 60 percent, when considering both the Canadian and U.S. range of the population. However, because there are no reliable historical estimates of the number of southern mountain caribou and their distribution (Spalding 2000, p. 34), it is difficult to precisely estimate their historical range for a comparison to their current range. Nevertheless, according to COSEWIC (2014, p. 14), mountain caribou were much more widely distributed than they are today, and thus the range of this population is decreasing. Further evidence of this decline is supported by

population surveys. For example, Hatter *et al.* (2004, p. 7) reported there were an estimated 2,554 individuals in the population in 1995, but in 2014, COSEWIC (2014, p. xvii) estimated the number of caribou in this population has declined to only 1,356 individuals.

Loss of the southern mountain caribou population would result in the loss of the southern-most extent of the range of woodland caribou by about 2.5 degrees of latitude. The Service has not established a threshold of degrees latitude loss or percent range reduction for determining significance to a particular taxon. The importance of specific degrees latitude loss and/or percent range reduction, and the analysis of what such loss or reduction ultimately means to conservation of individual species/subspecies necessarily will be specific to the biology of the species/subspecies in question. However, the extirpation of peripheral populations, such as the southern mountain caribou population, is concerning because of the potential conservation value that peripheral populations can provide to a species or subspecies. Specifically, peripheral populations can possess slight genetic or phenotypic divergences from core populations (Lesica and Allendorf 1995, p. 756; Fraser 2000, p. 50). The genotypic and phenotypic characteristics peripheral populations may provide to the core population of the species may be central to the species' survival in the face of environmental change (Lesica and Allendorf 1995, p. 756; Bunnell *et al.* 2004, p. 2,242). Additionally, data tend to show that peripheral populations are persistent when species' range collapse occurs (Lomolino and Channell 1995, p. 342; Channell and Lomolino 2000, pp. 84–86; Channell 2004, p. 1). Of 96 species whose last remnant populations were found either in core or periphery of the historical range (rather than some in both core and periphery), 91 (95 percent) of the species were found to exist only in the periphery, and 5 (5 percent) existed solely in the center (Channell and Lomolino 2000, p. 85). Also, as described previously, caribou within the southern mountain population occur at the southern edge of woodland caribou range (*i.e.*, they are a peripheral population), and have adapted to an environment unique to woodland caribou. Peripheral populations adapted to different environments may facilitate speciation (Mayr 1970 in Channell 2004, p. 9). Thus, the available scientific literature data support the importance of peripheral populations for conservation

(Fraser 2000, entire; Lesica and Allendorf, 1995, entire).

Additionally, loss of the southern mountain caribou population would result in the loss of the only remaining population of the woodland caribou in the coterminous United States. An additional consequence of the loss of the southern mountain caribou population would be the elimination of the only North American caribou population with the distinct behavior of feeding exclusively on arboreal lichens for 3 or more months of the year. This feeding behavior is related to their spending winter months in high-elevation, steep, mountainous habitats with deep snowpack.

Finally, extirpation of this population segment would result in the loss of a peripheral population segment of woodland caribou that live in, and are behaviorally adapted to, a unique

ecological setting characterized by high-elevation, high-precipitation (including deep snowpack), and steep old-growth conifer forests that support abundant arboreal lichens.

V. Significance Conclusion

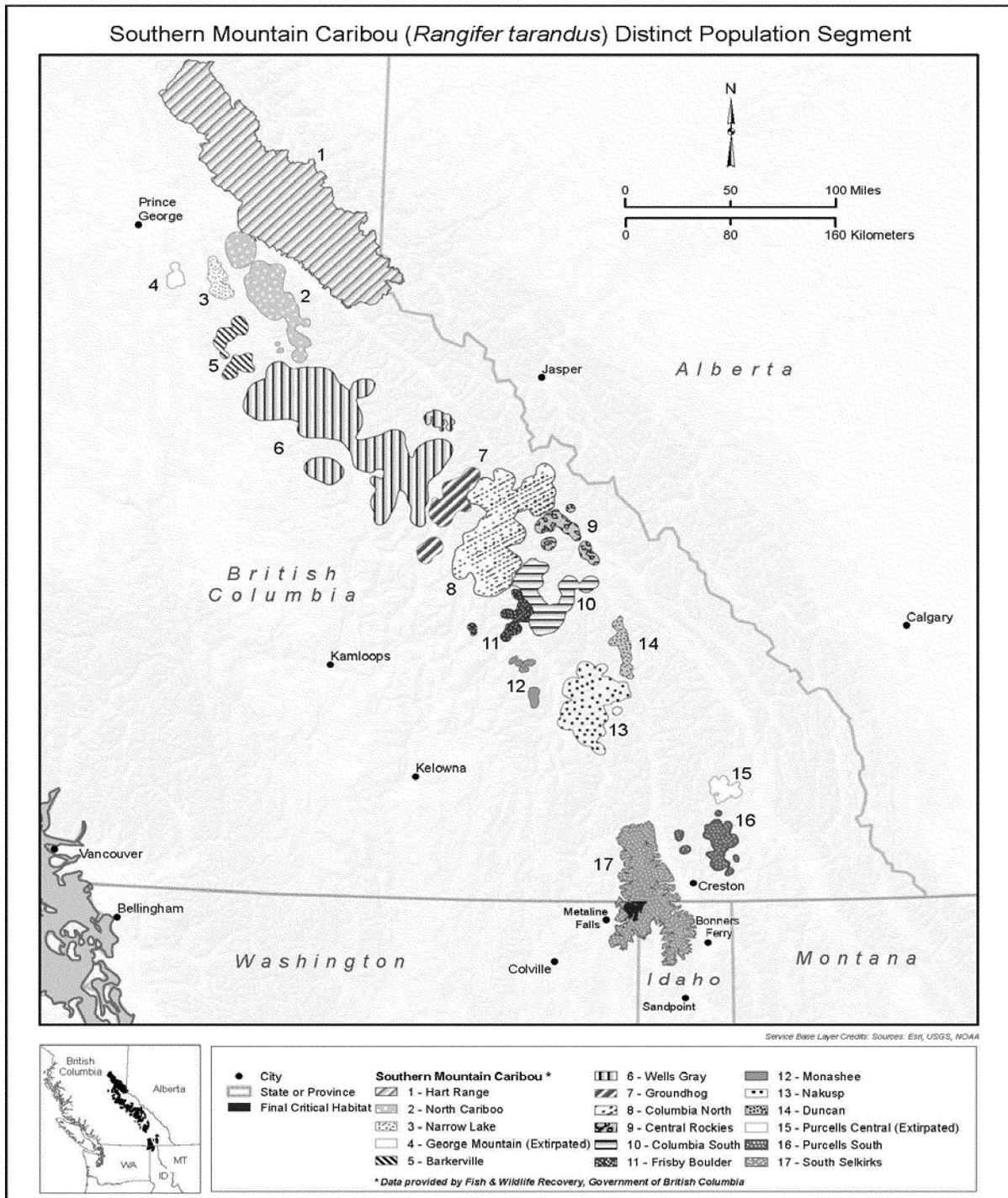
We conclude that the southern mountain caribou persists in an ecological setting unusual or unique for the subspecies of woodland caribou, and that loss of the southern mountain caribou would result in a significant gap in the range of the woodland caribou subspecies. Therefore, the discrete southern mountain caribou population of woodland caribou that occur in southern British Columbia and in northeastern Washington and northern Idaho meets significance criteria under our DPS policy.

Listable Entity Determination

In conclusion, the Service finds that the southern mountain caribou population meets both the discreteness and significance elements of our DPS policy. It qualifies as discrete because of its marked physical (geographic) and behavioral separation from other populations of the woodland caribou subspecies. It qualifies as significant because of its existence in a unique ecological setting, and because the loss of this population would leave a significant gap in the range of the woodland caribou subspecies. For consistency, we will refer to the southern mountain DU, described by COSEWIC, as the southern mountain caribou DPS. See Figure 1 for a map of the known distribution of subpopulations within the southern mountain caribou DPS.

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Figure 1. Known distribution of the 17 subpopulations of the southern mountain caribou DPS. Local population boundaries depicted were provided to the Service by COSEWIC.



Status of the Southern Mountain Caribou DPS

As described previously, because there are no reliable historical estimates of the number of southern mountain caribou and their distribution (Spalding 2000, p. 34), it is difficult to precisely estimate their historical range for a comparison to their current range.

Nevertheless, according to COSEWIC (2014, p. 14), mountain caribou were much more widely distributed than they are today, and thus the range of this population is decreasing. Further evidence of this decline is supported by population surveys. For example, surveys of the southern mountain caribou population in 1995 estimated

there were 2,554 individuals in the population (Hatter *et al.* 2004, p. 7), but in 2014, COSEWIC estimated the number of caribou in this population has declined to only 1,356 individuals (COSEWIC 2014, p. xvii). The status (increasing, declining) of each subpopulation and current population estimate is identified in Table 1.

- ¹ Slanted bars indicate the period over which the 3-generation population change was calculated, and the cross-hatching indicates the period over which the 2-generation population change was calculated. In the trend column, down arrow indicates declining trend, up arrow indicates increasing trend, equal sign indicates a stable trend, and X indicates an extirpated population based on available survey estimates. Current trend is from interviews with regional biologists.
- ² Augmented with 60 caribou from 1988 to 1990, and 43 caribou from 1996 to 1998 (Compton *et al.* 1995; Wakkinen 2003)
- ³ Augmented with 10 caribou in March 2012; all transplanted caribou confirmed dead except 2 with failed collars (L. de Groot 2013, pers. comm.)
- ⁴ Augmented with 9 caribou in March 2012; all transplanted caribou died or left the area and died (L. de Groot 2013, pers. comm.)
- ⁵ Augmented with 9 caribou in winter 1984/85 (Wahl 1988).
- ⁶ Liberalized moose hunting from 2003 to present resulting in a 71 percent reduction of moose and approximately 50 percent reduction in wolves (Serrouya 2013)
- ⁷ Wolf sterilization/removal conducted 2001-2004 and 2007-2012; moose reduction through liberalized harvest conducted 2001-2011 (Roorda and Wright 2012; Hayes 2013); population management actions limited to the Barkerville subpopulation and Wells Gray North portion only of the Wells Gray subpopulation
- ⁸ Moose reduction through liberalized harvest conducted 2006 to present in the Parsnip portion of the Hart Ranges only (D. Heard 2013, pers. comm.)
- ⁹ Purcells Central considered part of Purcells South range in COSEWIC (2002)
- ¹⁰ Naskup and Duncan equivalent to Central Selkirks in COSEWIC (2002)
- ¹¹ Columbia South, Groundhog, Frisby-Boulder, and Columbia North all part of Revelstoke range in COSEWIC (2002)

Currently the southern mountain caribou DPS is composed of 17 subpopulations (15 extant, 2 extirpated) (Figure 1, above). However, Canada has, over time, grouped its caribou populations in accordance with various assessments (COSEWIC 2002, entire; COSEWIC 2011, entire), which has resulted in shifting boundaries, and moving one or more subpopulations between differing geographic groupings of populations. In addition to altering boundaries between populations, some subpopulation boundaries within the populations have changed as well (e.g., some subpopulations have been combined). Thus, the number of subpopulations within the populations has changed. For example, the Allan Creek subpopulation listed in Hatter (2006, *in litt.*) was grouped with the Wells Gray subpopulation in COSEWIC (2014), and the Kinbasket-South subpopulation listed in Hatter (2006, *in litt.*) was renamed to Central Rockies subpopulation in COSEWIC (2014) (Ray 2014, pers. comm.). Additionally, the north and south Wells Gray subpopulations referred to in COSEWIC (2002, p. 92) were combined into a single Wells Gray subpopulation in COSEWIC's 2011 Designatable Unit Report (COSEWIC 2011, p. 89). However, the number (17) of subpopulations (which includes 15 extant and 2 recently extirpated subpopulations) and their names encompassed within the southern mountain caribou DPS conforms to Canada's southern mountain (DU9) as identified pursuant to COSEWIC (2011, entire).

All 15 extant subpopulations consist of fewer than 400 individuals each, 13 of which have fewer than 250 individuals, and 9 of which have fewer than 50 individuals (COSEWIC 2014, p. xviii). Fourteen of the 15 extant subpopulations within this DPS have declined since the last assessment by COSEWIC in 2002 (COSEWIC 2014, p. vii). Based on COSEWIC (2014, p. vii), which is new information received after we published our proposed amended listing rule (79 FR 26504; May 8, 2014), the population has declined by at least 45 percent over the last 27 years (3 generations), 40 percent over the last 18 years (2 generations), and 27 percent since the last assessment by COSEWIC in 2002 (roughly 1.4 generations) (COSEWIC 2014, p. vii). These subpopulations are continuing to suffer declines in numbers and range and have become increasingly isolated. Only one subpopulation has increased in numbers (likely due to aggressive wolf control and management) but still consists of

fewer than 100 individuals; the most recent estimate was 78 individuals (COSEWIC 2014, p. 43). Given the data cited above, the rate of population decline is accelerating. The accelerated rate of population decline is supported by Wittmer *et al.* (2005b, p. 265), who studied rates and causes of southern mountain caribou population declines from 1984 to 2002 and found an increasing rate of decline.

Because subpopulation names and boundaries have changed over time, it is difficult to precisely compare subpopulation estimates for some subpopulations within the southern mountain caribou DPS over time. However, according to Wittmer *et al.* (2005b, p. 413), individual subpopulations have decreased by up to 18 percent per year (Wittmer *et al.* 2005b, p. 413). For example, the Purcells South subpopulation, which is located above the Montana border, had an estimated 100 individuals in 1982, and only 20 in 2002. According to COSEWIC, this subpopulation had increased to 22 individuals in 2014 (COSEWIC 2104, p. xviii). Even though this subpopulation has slightly increased, it remains depressed.

Additionally, our May 8, 2014, proposed rule (79 FR 26504) stated that the Wells Gray South subpopulation was considered stable at 325 to 350 caribou from 1995 to 2002 (see 79 FR 26514). These numbers were obtained from Hatter *et al.* (2004, p. 7). However, according to COSEWIC's 2002 status report the subpopulation was estimated at 315 individuals and considered to be in decline (COSEWIC 2002, p. 92). Furthermore, as noted previously, COSEWIC has combined the north and south Wells Gray subpopulations (COSEWIC 2011, p. 89). According to COSEWIC, in 2002, the Wells Gray North subpopulation was estimated at 200 individuals and considered stable. Thus, the COSEWIC (2002) estimate for the combined Wells Gray subpopulation (*i.e.*, north and south subpopulations) was 515 individuals (COSEWIC 2002, p. 92). According to COSEWIC's latest assessment, the Wells Gray subpopulation is estimated at 341 individuals and considered to be declining (COSEWIC 2014, p. 41). Also, in our May 8, 2014, proposed rule (79 FR 26504), we stated that subpopulations in the northern-most portion of the DPS's range were stable (principally the Hart Ranges subpopulation with an estimated 500 individuals in 2005) (see 79 FR 26515). However, according to COSEWIC's latest status assessment, both the Hart Ranges and North Caribou Mountains subpopulations, which are both located

at the northern end of this DPS's range, are declining, with population estimates of 398 and 202 caribou, respectively (COSEWIC 2014, p. 41).

Surveys of the subpopulations in the southern mountain caribou DPS estimated that, in 1995, the entire population was approximately 2,554 individuals (Hatter *et al.* 2004, p. 7). By 2002, this number had decreased to approximately 1,900 individuals (Hatter *et al.* 2004, p. 7). Currently, the population is estimated to be 1,356 individuals (COSEWIC 2014, p. xvii). Many subpopulations within the southern mountain caribou DPS are reported to have experienced declines of 50 percent or greater between 1995 and 2002 (MCST 2005, p. 1). Some of the most extreme decreases were observed in the Central Selkirk and Purcells South subpopulations. These subpopulations experienced 61 and 78 percent reductions in their populations, respectively, during this time (Harding 2008, p. 3).

Population models indicate declines will continue into the future for the entire southern mountain caribou DPS and for many subpopulations. Hatter *et al.* (2004, p. 9) predicted subpopulation levels within this DPS under three different scenarios: "optimistic," "most likely," and "pessimistic." Under these scenarios population levels were modeled to decline from the estimated population of 1,905 caribou in 2002 to 1,534 (optimistic), 1,169 (most likely), or 820 (pessimistic), by 2022. The most recent population estimate of 1,356 caribou (COSEWIC 2014, p. 41) is already well below Hatter *et al.*'s (2004, p. 9) predicted population estimate of 1,534 caribou in 2022 projected under the optimistic scenario. In addition, all three scenarios reported the extirpation of two (optimistic), three (most likely), or five (pessimistic) subpopulations by 2022 (Hatter *et al.* 2004, p. 9). As of 2014, George Mountain and Purcells Central, two of the subpopulations within the southern mountain caribou DPS, are now considered to be extirpated (COSEWIC 2014, p. 16).

According to Hatter *et al.* (2004, pp. 9, 11), no models predicted extinction of the woodland caribou population within the DPS in the next 100 years (Hatter *et al.* 2004, p. 11). However, reductions in the size of the entire population were predicted. Using the same scenarios from Hatter *et al.* (2004) as described above ("optimistic," "most likely," and "pessimistic"), the average time until the population of woodland caribou within the southern mountain caribou DPS is fewer than 1,000 individuals was projected to be 100, 84, and 26 years, respectively (Hatter *et al.*

2004, p. 11). These estimates do not account for the relationship between density and adult female survival, and may be a conservative estimate of time to extinction (in other words, may underestimate the timeframes). Wittmer (2004, p. 88) attempted to account for density-dependent adult female survival and predicted extinction of all subpopulations in the DPS within the next 100 years. More recent population viability analyses (PVAs) have predicted quasi-extinction or extinction of several of the subpopulations within the DPS. A PVA conducted by Hatter (2006, p. 7, *in litt.*) predicted that the probability of quasi-extinction (a number below which extinction is very likely due to genetic or demographic risks, considered to be fewer than 20 animals in this case) in 20 years was 100 percent for 6 of the 15 subpopulations, greater than 50 percent for 11 of the 15 subpopulations, and greater than 20 percent for 12 of the 15 subpopulations within the DPS. Hatter (2006, p. 7, *in litt.*) also predicted quasi-extinction of another subpopulation (Wells Gray) in 87 years. Thus, a total of 13 of the 15 subpopulations could be quasi-extinct within 90 years, leaving only 2 subpopulations (Hart Ranges and North Caribou Mountains) remaining at the extreme northern portion of the DPS's range. Both the Hart Ranges and North Caribou Mountains subpopulations are declining (COSEWIC 2014, p. 41). These two subpopulations are subjected to the same threats acting on the other subpopulations in this DPS (COSEWIC 2014, p. 56), and are thus at a greater risk of extirpation than what we understood at the time of our May 8, 2014, proposed rule (79 FR 26504).

Wittmer *et al.* (2010, entire) conducted a PVA on 10 of the subpopulations assessed by Hatter (2006, entire, *in litt.*). All 10 subpopulations were predicted to decline to extinction within 200 years when models incorporated the declines in adult female survival known to occur with increasing proportions of young forest and declining population densities (Wittmer *et al.* 2010, p. 86). The results of PVA modeling by Wittmer *et al.* (2010, p. 90) also suggested that 7 of the 10 populations have a greater than 90 percent cumulative probability of extirpation within 100 years. Further, Wittmer *et al.* (2010, p. 91) suggested that as subpopulation densities decline, predation (see "Predation" under the Factor C analysis, below) may have a disproportionately greater effect, which is defined as compensatory mortality. Thus, the length of time to extirpation may be less than the timeframes

suggested by PVA modeling that does not account for compensatory mortality. Therefore, the 200 and 100 year time spans that Wittmer *et al.* (2010, pp. 86, 90) predict for extirpation of all 10 and 7 of the 10 subpopulations, respectively, may be an overestimate (*i.e.*, extirpation of these subpopulations may occur in less time).

Along with these documented and predicted population declines, subpopulations of woodland caribou within the DPS are becoming increasingly fragmented and isolated (Wittmer 2004, p. 28; van Oort *et al.* 2011, p. 25; Serrouya *et al.* 2012, p. 2,598). Fragmentation and isolation are particularly pronounced in the southern portion of the southern mountain caribou DPS (Wittmer 2004, p. 28). In fact, neither Wittmer *et al.* (2005b, p. 409) nor van Oort *et al.* (2011, p. 221) detected movement of individuals between subpopulations in the DPS.

Fragmentation and isolation are likely accelerating the extinction process and reducing the probability of demographic rescue from natural immigration or emigration because mountain caribou appear to lack the inherent behavior to disperse long distances (Van Oort *et al.* 2011, pp. 215, 221–222). As stated previously, mountain caribou were more widely distributed in mountainous areas of southeastern British Columbia (Canada), northern Idaho, and northeastern Washington. Currently, mountain caribou exist in several discrete subpopulations, which could be considered a metapopulation structure. However, a functioning metapopulation structure requires immigration and emigration between the subpopulations within the metapopulation via dispersal of juveniles (natal dispersal), adults (breeding dispersal), or both. Dispersal of individuals (natal or breeding) can facilitate demographic rescue of neighboring populations that are in decline or recolonization of ranges from which populations have been extirpated (*i.e.*, classic metapopulation theory). Species whose historical distribution was more widely and evenly distributed (such as mountain caribou) (van Oort *et al.* 2011, p. 221) that have been fragmented into subpopulations via habitat fragmentation and loss may appear to exist in a metapopulation structure when in fact, because they may not have evolved the innate behavior to disperse among subpopulations, their fragmented distribution may actually represent a geographic pattern of extinction (van Oort *et al.* 2011, p. 215). Also, as excerpted from COSEWIC (2014, p. 43):

Rescue effect from natural dispersal is unlikely for the southern mountain DU. The nearest subpopulation in the United States is the South Selkirk subpopulation, which is shared between [British Columbia], Idaho, and Washington, and currently consists of only 28 mature individuals. Even within the southern mountain DU, subpopulations are effectively isolated from one another with almost no evidence of movement between them except at the northern extent of the DU (van Oort *et al.* 2011). The closest DU is the Central Mountain and Northern Mountain DU, but these animals are not only declining in most neighboring subpopulations but are adapted to living in shallow snow environments and will likely encounter difficulty adjusting to deep snow conditions. The same characteristics that render all three mountain caribou DUs as discrete and significant relative to neighboring caribou subpopulations (see Designatable Units; COSEWIC 2011) make the prospects for rescue highly unlikely.

Finally, COSEWIC recommended that the southern mountain DU be listed as endangered under SARA (COSEWIC 2014, pp. iv, xix). Endangered is defined by SARA as a wildlife species that is facing imminent extirpation or extinction. COSEWIC cited similar reasons as the threats we identified in this final rule including, but not limited to: Small, declining, and isolated subpopulations; recent extirpation of two subpopulations; recent PVA modeling predicting further declines and extirpation of subpopulations; and continuing and escalating threats (COSEWIC 2014, pp. iv, vii). The International Union for the Conservation of Nature-Conservation Measures Partnership (IUCN-CMP) threat assessment for the southern mountain DU concluded that the threat impact is the maximum (Very High) based on the unified threats classification system (Master *et al.* 2009, entire), which indicates continued serious declines are anticipated (COSEWIC 2014, pp. 109–113).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we determine whether a species is an endangered species or threatened species because of any one or a combination of the following: (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; and (E)

other natural or manmade factors affecting its continued existence. Listing actions may be warranted because of any of the above threat factors, singly or in combination. We discuss each of these factors for the southern mountain caribou DPS below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Threats to caribou habitat within the southern mountain DPS include forest harvest, human development, recreation, and effects due to climate change (such as an increase in fires and a significant decrease in alpine habitats, which is loosely correlated with the distribution of the arboreal lichens on which these caribou depend). In addition to causing direct impacts, these threats often catalyze indirect impacts to caribou, including, but not limited to, predation, increased physiological stress, and displacement from important habitats. Both direct and indirect impacts to caribou from habitat destruction, modification, and curtailment are described below.

Historically, the caribou subpopulations that make up the southern mountain caribou DPS were distributed throughout the western Rocky Mountains of British Columbia, northern Idaho, and northeastern Washington (Apps and McLellan 2006, p. 84). As previously discussed, caribou within the southern mountain caribou DPS are strongly associated with high-elevation, high-precipitation, old-growth forested landscapes (Stevenson *et al.* 2001, pp. 3–5; Cichowski *et al.* 2004, pp. 224, 231; Apps and McLellan 2006, pp. 84, 91; COSEWIC 2011, p. 50) that support their uniquely exclusive winter diet of arboreal lichens (Cichowski *et al.* 2004, p. 229).

It is estimated that about 98 percent of the caribou in the southern mountain caribou DPS rely on arboreal lichens as their primary winter food. They have adapted to the high-elevation, deep-snow habitat that occurs within this area of British Columbia, northern Idaho, and northeastern Washington (Apps and McLellan 2006, p. 84). The present distribution of woodland caribou in Canada is much reduced from historical accounts, with reports indicating that the extent of occurrence in British Columbia and Ontario populations has decreased by up to 40 percent in the last few centuries (COSEWIC 2002, pp. viii, 30). According to Spalding (2000, p. 40) the entire range of southern mountain caribou has decreased by 60 percent when including both the United States and Canadian portion of the

population's historical range. The greatest reduction has occurred in subpopulations comprising the southern mountain caribou DPS (COSEWIC 2002, p. 30; COSEWIC 2011, p. 49). Hunting was historically considered the main cause of range contraction in the central and southern portions of British Columbia. However, predation, habitat fragmentation from forestry operations, and human development are now considered the main concerns (COSEWIC 2002, p. 30).

Forest Harvest

Forestry has been the dominant land use within the range of the southern mountain caribou DPS in British Columbia throughout the 20th century. The majority of timber harvesting has occurred since the late 1960s (Stevenson *et al.* 2001, pp. 9–10). Prior to 1966 and before pulp mills were built in the interior of British Columbia, a variety of forest harvesting systems were utilized, targeting primarily spruce and Douglas fir (*Pseudotsuga menziesii*) sawlogs, and pole-sized western red cedar. It was not until after 1966, when market conditions changed to meet the demand for pulp and other timber products, that the majority of timber harvesting occurred through clear-cutting large blocks of forest (Stevenson *et al.* 2001, p. 10). However, in the 1970s, some areas in the southern Selkirk Mountains and the North Thompson area (north of Revelstoke, British Columbia) were only partially cut in an effort to maintain habitat for caribou (Stevenson *et al.* 2001, p. 10). In the 1990s, there was an increase in both experimental and operational partial cutting in caribou habitat. Partial cuts continue to remain a small proportion of total area harvested each year within caribou habitat in British Columbia (Stevenson *et al.* 2001, p. 10).

Historically, within the U.S. portion of the southern mountain caribou DPS, habitat impacts have been primarily due to logging and fire (Evans 1960, p. 109). In the early 19th century, intensive logging occurred from approximately 1907 through 1922, when the foothills and lowlands were logged upwards in elevation to the present U.S. national forest boundaries (Evans 1960, p. 110). Partly because of this logging, farmlands replaced moister valleys that once resembled the rain forests of the Pacific coast (Evans 1960, p. 111). From the 1920s through 1960, logging continued into caribou habitat on the Kanisku National Forest in Idaho (now the Idaho Panhandle National Forest) (Evans 1960, pp. 118–120). In addition, insect and disease outbreaks affected large areas of white pine (*Pinus strobus*) stands in

caribou habitat, and Engelmann spruce habitat was heavily affected by windstorms, insect outbreaks, and subsequent salvage logging (Evans 1960, pp. 123–124). As a result, spruce became the center of importance in the lumber industry of this region. This led to further harvest of spruce habitat in adjacent, higher elevation drainages previously unaffected by insect outbreaks (Evans 1960, pp. 124–131). It is not known how much forest within the range of the southern mountain caribou DPS has been historically harvested; however, forest harvest likely had and continues to have direct and indirect impacts on caribou and their habitat, contributing to the curtailment and modification of the habitat of the southern mountain caribou DPS.

Harvesting of forests has both direct and indirect effects on caribou habitat within the southern mountain caribou DPS. A direct effect of forest harvest is loss of large expanses of contiguous old-growth forest habitats. Caribou in the southern mountain caribou DPS rely upon these habitats as an important means of limiting the effect of predation. Their strategy is to spread over large areas at high elevation that other prey species avoid (Seip and Cichowski 1996, p. 79; MCTAC 2002, pp. 20–21). These old-growth forests have evolved with few and small-scale natural disturbances such as wildfires, insects, or diseases. When these disturbances did occur, they created only small and natural gaps in the forest canopy that allowed trees to regenerate and grow (Seip 1998, pp. 204–205). Forest harvesting through large-scale clear-cutting creates additional and larger openings in old-growth forest habitat. These openings allow for additional growth of early seral habitat.

Research of woodland caribou has shown that caribou alter their movement patterns to avoid areas of disturbance where forest harvest has occurred (Smith *et al.* 2000, p. 1435; Courtois *et al.* 2007, p. 496). With less contiguous old-growth habitat, caribou are also limited to increasingly fewer places on the landscape. Further, woodland caribou that do remain in harvested areas have been documented to have decreased survival due to predation vulnerability (Courtois *et al.* 2007, p. 496). This is because the early seral habitat, which establishes itself in recently harvested or disturbed areas, also attracts other ungulate species such as deer, elk, and moose to areas that were previously unsuitable for these species (MCST 2005, pp. 4–5; Bowman *et al.* 2010, p. 464). With the increase in the distribution and abundance of prey species in or near habitats located where

caribou occur comes an increase in predators and therefore an increase in predation on caribou. Predation has been reported as one of the most important direct causes of population decline for caribou in the southern mountain caribou DPS (see also *C. Disease or Predation*, below; MCST 2005, p. 4; Wittmer *et al.* 2005a, p. 257; Wittmer *et al.* 2005b, p. 417; Wittmer *et al.* 2007, p. 576).

Roads created to support forest harvest activities have also fragmented habitat. Roads create linear features that provide easy travel corridors for predators into and through difficult habitats where caribou seek refuge from predators (MCST 2005, p. 5; Wittmer *et al.* 2007, p. 576). It has been estimated that forest roads throughout British Columbia (which includes the southern mountain caribou DPS) expanded by 4,100 percent (from 528 to 21,748 mi (850 to 35,000 km)) between 1950 and 1990, and most of these roads were associated with forest harvesting (Stevenson *et al.* 2001, p. 10). In the United States, roads associated with logging and forest administration developed continuously from 1900 through 1960. These roads allowed logging in new areas and upper-elevation drainages (Evans 1960, pp. 123–124). In both Canada and the United States, these roads have also generated more human activity and human disturbance in habitat that was previously less accessible to humans (MCST 2005, p. 5). See *E. Other Natural or Manmade Factors Affecting Its Continued Existence* for additional discussion.

The harvest of late-successional (old-growth) forests directly affects availability of arboreal lichens, the primary winter food item for caribou within the southern mountain caribou DPS. Caribou within this area rely on arboreal lichens for winter forage for 3 or more months of the year (Apps *et al.* 2001, p. 65; Stevenson *et al.* 2001, p. 1; MCST 2005, p. 2). In recent decades, however, local caribou populations in the southern mountain caribou DPS have declined faster than mature forests have been harvested. This suggests that arboreal lichens are not the limiting factor for woodland caribou in this area (MCST 2005, p. 4; Wittmer *et al.* 2005a, p. 265; Wittmer *et al.* 2007, p. 576).

Forest Fires

Forest fires can have the same effect on mountain caribou habitat in the southern mountain caribou DPS as forest harvesting. Fires cause direct loss of important old-growth habitat and increase openings that allow for the growth of early seral habitat, which is

conducive to use by other ungulates, such as deer and moose, but not by mountain caribou, which require old growth, mature forests. Historically, natural fires occurred at very low frequency and extent throughout the range of the southern mountain caribou DPS. This was due to the very wet conditions of the interior wet-belt (Stevenson *et al.* 2001, p. 3). When fires did occur, most were relatively small in size (Seip 1998, p. 204). Fires can remove suitable habitat for 25 to 100 years or longer depending on fire intensity, geography, and type of forage normally consumed by caribou (COSEWIC 2002, p. 45). As previously discussed, changes in habitat conditions have led to altered predator-prey dynamics, resulting in more predation on caribou in the southern mountain caribou DPS. One of the first notable declines of caribou was reported in Wells Gray Park, British Columbia (within the southern mountain caribou DPS), and was attributed to fires in the 1930s that burned approximately 70 percent of forests below 4,000 ft (1,219 m) within the park (Edwards 1954, entire). These fires changed forest composition, leading to increased populations of other ungulates, such as mule deer and moose (Edwards 1954, p. 523), which altered the predator-prey dynamics. The 1967 Sundance, Kanisku Mountain, and Trapper Peak fires in the Selkirk Mountains destroyed almost 80,000 ac (32,375 ha) of caribou habitat (Layser 1974, p. 51). In 2006, the Kutetl fire in West Arm Park (British Columbia) destroyed nearly 19,768 ac (8,000 ha) of caribou habitat (Wildeman *et al.* 2010, pp. 1, 14, 33, 36, 61). Forest fires are a natural phenomenon and historically occurred at low frequency and extent throughout the range of the southern mountain caribou DPS prior to human settlement. However, fires are predicted to increase in frequency and magnitude due to the effects of climate change (Littell *et al.* 2009, p. 14) (see “Climate Change,” below), thereby continuing to impact caribou habitat in the southern mountain caribou DPS into the future.

Insect Outbreaks

Engelmann spruce beetles (*Dendroctonus engelmannii*) have been known to kill large amounts of old-growth forest and caribou habitat in western Canada and the northwestern United States. Spruce bark beetle (*Dendroctonus rufipennis*) outbreaks and resulting tree mortality within the southern mountain caribou DPS occurred in the late 1940s, 1950s, 1960s, and 1980s. Some of these outbreaks followed tree wind-throw or forest fires

in the United States (Evans 1960, p. 124; USFWS 1985, p. 21).

More recently, mountain pine beetle (*Dendroctonus ponderosae*) outbreaks and mass tree mortality in western Canada have occurred in the 1990s and 2000s. Caribou habitat affected by mountain pine beetle outbreaks may remain viable for caribou, or may even provide better forage for a period of time, perhaps as long as a decade. This is because dead and dying trees may remain standing and continue to provide arboreal lichens to foraging caribou. However, eventually these trees fall and arboreal lichens become scarcer, forcing caribou to seek alternate habitat (Hummel and Ray 2008, p. 252).

Beetle outbreaks have impacted caribou within the southern mountain caribou DPS by directly removing habitat and associated arboreal lichens from the landscape (Evans 1960, p. 132). In addition to eliminating caribou habitat, these beetle outbreaks have brought increased logging operations to high-elevation forests. This logging was done in an attempt to salvage the valuable wood resource in these forest stands. However, this activity also brought human presence and an increase in the potential for poaching and disturbance (Evans 1960, p. 131; USFWS 1985, p. 21). Interestingly, because of the spruce bark beetle outbreaks and a sudden increase in spruce harvest, the logging industry, in an attempt to sell the wood that was being salvaged from the mid-century spruce bark beetle outbreaks, aggressively promoted and developed a market for spruce wood. The associated demand they created for spruce wood continued after the salvaged wood was exhausted, probably leading to continued logging of spruce forests at high elevations. This continued logging of spruce continued the elimination of habitat and prolonged disturbance to caribou beyond the direct impacts from the beetle infestations (Evans 1960, p. 131).

Management of beetle outbreaks for caribou has involved attempting to preserve alternate habitat until affected forests have time to regenerate and once again become suitable for caribou (Hummel and Ray 2008, p. 252). It is not clear to what extent insect infestations will continue into the future; however, climate change models project more frequent mountain pine beetle outbreaks at higher elevations in the future (Littell *et al.* 2009, p. 14).

Human Development

Human development fragments habitat within and between local caribou populations in the southern

mountain caribou DPS and creates potential impediments to unrestricted caribou movements (MCST 2005, p. 5). Impediments in valley bottoms, such as human settlements, highways, railways, and reservoirs, have led to an isolation of subpopulations (MCST 2005, p. 5; Wittmer *et al.* 2005b, p. 414) and reduced chance of rescue (the movement of individuals, often juveniles, to other subpopulations, which can provide genetic flow and recruitment to populations with very low numbers) from natural immigration or emigration (van Oort *et al.* 2011, pp. 220–223; Serrouya *et al.* 2012, p. 2,598). Similar to forest harvest and fires, human development and its associated infrastructure also impact caribou in the following ways: It eliminates caribou habitat, alters the distribution and abundance of other ungulate species, provides travel corridors for predators (MCST 2005, p. 5), and increases human access to habitat that was previously difficult to access.

Despite signs posted with caribou depictions warning motorists, caribou have also been killed by vehicles on highways within the range of the southern mountain caribou DPS (Johnson 1985, entire; Wittmer *et al.* 2005b, p. 412; CBC News 2009, *in litt.*). The 1963 opening of the Creston-Salmo section of Highway 3 in British Columbia has led to increased vehicle collisions with mountain caribou. Seven caribou were struck and killed on this section of Highway 3 within the first 9 years of its construction (Johnson 1985, entire). More recently, in 2009, a pregnant caribou cow and calf were killed by a vehicle travelling on Highway 3 near Kootenay Pass in British Columbia (CBC News 2009, *in litt.*). Deaths of individual caribou from car collisions can have notable adverse effects on subpopulations. This is because of the small population sizes of the southern-most populations within the southern mountain caribou DPS and the low productivity and calf survival rates as discussed under “Biology” in the *Species Information* section of the May 8, 2014, proposed rule (79 FR 26507).

Highways and their associated vehicle traffic can also fragment caribou habitat and act as impediments to animal movement (Forman and Alexander 1998, p. 215; Dyer *et al.* 2002, p. 839; Fahrig and Rytwinski 2009, entire). Species like the southern mountain caribou DPS, which have relatively large ranges, low reproductive rates, and low natural densities, are more likely to be negatively affected by roads (Fahrig and Rytwinski 2009, entire). It has been postulated that the Trans-Canada

Highway may also be acting as an impediment to caribou movements in certain areas of the southern mountain caribou DPS (Apps and McLellan 2006, p. 93). Additionally, other type of transportation corridors associated with industrial developments, including roads, snowmobile trails, hydropower transmission lines, and pipeline rights-of-way, can allow more efficient travel by wolves, leading to greater predation rate on caribou (Festa-Bianchet *et al.* 2011, p. 426) (see also *C. Disease or Predation*, below).

As discussed above, industrial development can directly affect caribou through habitat alteration that fragments caribou habitat and displaces caribou to areas of lower quality or degraded habitat, and indirectly through increased predation rates resulting from changes in predator-prey dynamics due to habitat alterations. In accordance with SARA, Canada has developed a recovery strategy for southern mountain caribou that assessed threats related to industrial developments (Environment Canada 2014, entire). In the recovery strategy, Canada identified the following threats: Oil and gas drilling related to shale gas development in the Kootenays present a moderate threat (defined as possible in the short term [less than 10 years or 3 generations]); mining and quarrying development primarily in the Barkerville, Kootenay, and Kamloops areas present a high threat (defined as continuing); renewable energy related to hydropower projects in the Columbia South and North ranges, and wind farms, present moderate threats; roads and railroad (*e.g.*, Highway 3, Mica Dam Road, and potential twinning of the Trans-Canada Highway) present a high threat; and utility and service lines related to hydro-power project, potential twinning of the Kinder-Morgan oil pipeline, proposed oil and gas pipelines in the Hart Ranges, etc., present a high threat (Environment Canada 2014, pp. 21–22). All of the above-identified threats are or would be located in Canada. Currently, there are no similar existing or proposed industrial developments that would potentially impact caribou habitat within the DPS's range in the United States.

Mining activities, although they may not be focused in valleys, may also fragment caribou habitat and limit their dispersal and movement. Additionally, these activities may play a role in the alteration of the distribution and abundance of other ungulate species. These activities may also provide travel corridors for predators (MCST 2005, p. 5), as well as increase human accessibility to habitat that was previously difficult to access. The

current extent of direct and indirect impacts to caribou from existing mining activities within the southern mountain caribou DPS is not well known.

Human Recreation

Human-related activities are known to impact caribou. Specifically, as described below, wintertime recreational activities such as snowmobiling, heli- or cat-skiing, and back-country skiing are likely to impact short-term behavior, long-term habitat use (MCST 2005, p. 5), and physiology (Freeman 2008, p. 44) of caribou. It is uncertain if these activities are affecting all populations within the southern mountain caribou DPS. Literature suggests that trail compaction resulting from high levels of wintertime recreational activities such as snowmobiling and snowshoeing may act as travel corridors for predators such as wolves. These trails allow easier access into winter caribou habitat that was previously more difficult for predators to navigate (Simpson and Terry 2000, p. 2; Cichowski *et al.* 2004, p. 241).

Snowmobile activity represents the greatest threat to caribou within the southern mountain caribou DPS relative to other winter recreation activities due to the overlap between preferred snowmobile habitat and preferred caribou habitat (Simpson and Terry 2000, p. 1). Deep snow, open forest, and scenic vistas are characteristics found in caribou winter habitat, and are also preferred by snowmobilers (Seip *et al.* 2007, p. 1,539), and snowmobilers can easily access these areas (Simpson and Terry 2000, p. 1). New forest roads may even be providing increased access to these areas (Seip *et al.* 2007, p. 1,539).

Within the southern mountain caribou DPS, caribou have been shown to alter their behavior by fleeing from (Simpson 1987, pp. 8–10), and dispersing from, high-quality winter habitat because of snowmobile activity (Seip *et al.* 2007, p. 1,543). Altered behavior in response to winter recreation in the form of fleeing can have energetic costs to caribou (Reimers *et al.* 2003, pp. 751–753). Perhaps more significantly, however, altered long-term habitat occupancy due to snowmobiling may force caribou within the southern mountain caribou DPS into inferior habitat where there may be energetic costs as well as elevated risks of predation or mortality from avalanches (Seip *et al.* 2007, p. 1,543). Anecdotal reports of caribou being notably absent in areas where they had been historically present, but where snowmobile activity had begun or increased (Kinley 2003, p. 20; USFS 2004, p. 12; Seip *et al.* 2007, p. 1,539),

support this concept. Further, Freeman (2008, p. 44) showed that caribou exhibit signs of physiological stress within and as far away as 6 mi (10 km) from snowmobile activity. Physiological stress in this study was estimated using fecal glucocorticoids (GC). Glucocorticoids, when chronically elevated, can reduce fitness of an individual by impacting feeding behavior, growth, body condition, resistance to disease, reproduction, and survival (Freeman 2008, p. 33). Caribou within 6 mi (10 km) of open snowmobile areas within the southern mountain caribou DPS showed chronically elevated GC levels. This suggests that snowmobile activity in certain areas of the southern mountain caribou DPS is causing some level of physiological stress to caribou and may be impacting caribou in some way. However, elevated GC levels may be caused by many different environmental factors and may not always translate to impacts (Romero 2004, p. 250; Freeman 2008, p. 48). The extent of impacts from chronically elevated GC levels in caribou appears to need further study (Freeman 2008, p. 46).

Given our understanding of the impacts to caribou from human disturbance (Simpson 1987, pp. 8–10), and information on other ungulate species relative to helicopter disturbance (Cote 1996, p. 683; Webster 1997, p. 7; Frid 2003, p. 393), the presence of humans and machines (helicopters or snow-cats) in caribou habitat from heli- or cat-skiing may be a potential source of disturbance to caribou in certain portions of the southern mountain caribou DPS. This disturbance is likely negatively impacting caribou by altering their behavior and habitat use patterns. Elevated GC levels in caribou has been documented within heli-ski areas. This suggests that heli-skiing activity in certain areas of the southern mountain caribou DPS is causing some level of physiological stress to caribou (Freeman 2008, p. 44). Additionally, since heli- and cat-skiing often require tree cutting for run and/or road maintenance, habitat alteration may be another threat posed from this activity (Hamilton and Pasztor 2009, entire). Further study may be necessary to understand the degree of impact to caribou from heli- and cat-skiing.

Disturbance impacts to caribou from backcountry skiing also are relatively unstudied. Our current knowledge of caribou responses to human disturbance suggests that backcountry skiing may be a potential source of disturbance to caribou, negatively impacting them by altering their behavior. These impacts

are likely similar to behavioral alterations from heli- or cat-skiing (Simpson and Terry 2000, p. 3; USFS 2004, p. 24). Duchesne *et al.* (2000, pp. 313–314) found that the presence of humans on snowshoes and skis impacted caribou behavior by altering foraging and vigilance, albeit this study was conducted outside the southern mountain caribou DPS where caribou foraging behavior is different. This study also suggested that caribou may habituate to this level of human disturbance (Duchesne *et al.* 2000, p. 314). Given the possibility of habituation, the relatively slow pace of activity participants, and the non-motorized nature of backcountry skiing or snowshoeing, it is suspected that this recreation activity at its current level poses a relatively small threat to caribou within certain areas of the southern mountain caribou DPS (Simpson and Terry 2000, p. 3; USFS 2004, p. 24). However, since the magnitude of impacts may be correlated with the number of activity participants in an area (Simpson and Terry 2000, p. 3), this activity may be a larger threat to caribou within the southern mountain caribou DPS in the future as some areas become more accessible from an expanded network of roads and increasing populations.

Each of these activities—snowmobiling, heli- or cat-skiing, and backcountry skiing—has the potential to disturb caribou. The extent to which caribou are impacted is likely correlated with the intensity of activity (Simpson 1987, p. 9; Duchesne *et al.* 2000, p. 315; Reimers *et al.* 2003, p. 753). Nature-based recreation and tourism are on the rise in rural British Columbia, with projected growth of approximately 15 percent per year (Mitchell and Hamilton 2007, p. 3). New forest roads may be providing increased access to caribou habitat as well (Seip *et al.* 2007, p. 1539). As such, the threat of human disturbance may be a contributing factor in caribou population declines within the southern mountain caribou DPS in the future.

Climate Change

Our analyses under the Act include consideration of the effects of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC), an international body established in 1988 to assess the science related to climate change and provide policymakers with regular assessments of the scientific basis of climate change, its impacts and future risks, and options for adaptation and mitigation. “Climate” refers to the

mean and variability of different types of weather conditions over time. Thirty years is a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78; IPCC 2014, pp. 119–120). 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; IPCC 2014, p. 120). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative (Thomas *et al.* 2011, pp. 126, 131, 136–137) and they may change over time. This change depends 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 used our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Between the 1600s and the mid-1800s, Europe and North America were in a period called the “Little Ice Age.” During this period, Europe and North America experienced relatively colder temperatures (IPCC 2001, p. 135). The cooling during this time is considered to be modest, with average temperature decreases of less than 1.8 degrees Fahrenheit (°F) (1 degree Celsius (°C)) relative to 20th century levels. Cooling may have been more pronounced in certain regions and during certain periods, such as in North America during the 1800s (IPCC 2001, p. 135).

On a global scale, climate change models under a range of emission scenarios consistently project future increases in temperature and increased precipitation at higher latitudes (Melillo *et al.* 2014, p. 33). At regional scales there is more variability, particularly when projecting future changes in precipitation. Average temperature has increased in the Northwest 1.3 °F between 1895 and 2011 (Dalton *et al.* 2013, p. xxi; Melillo *et al.* 2014, p. 489), while precipitation has fluctuated, but without a significant trend, during the same time period (Dalton *et al.* 2013, p. xxi; Melillo *et al.* 2014, p. 489). Temperature and precipitation extremes are projected to increase in the Northwest (Dalton *et al.* 2013, p. xxiii). For every season, some models project decreases and some project increases in future precipitation, but in a scenario of continued growth in heat-trapping gas emissions, summer precipitation is

projected to decrease by as much as 30 percent by the end of the century (2099) across many climate models. However, the projected changes in precipitation are relatively small compared to projected changes in temperature, and are likely to be masked by natural variability for much of the century (Melillo *et al.* 2014, p. 489). Increasing temperatures are likely to result in reduced snowpack accumulation in the winter and accelerated loss of snowpack in the spring (Mote *et al.* 2005, p. 48; Knowles *et al.* 2006, p. 4558). The earlier snowmelt that would result from projected temperature increases in the Northwest would reduce the amount of available water in the summer (Melillo *et al.* 2014, p. 11), expand the frost-free season (Melillo *et al.* 2014, p. 31), and increase the annual maximum number of consecutive dry days (Melillo *et al.* 2014, p. 33). Virtually all future climate scenarios for the Pacific Northwest project increases in wildfire in western North America, especially east of the Cascades. This projected increase is due to higher summer temperatures, earlier spring snowmelt, and lower summer flows, which can lead to drought stress in trees (Littell *et al.* 2009, p. 14). Westerling *et al.* (2006, pp. 942–943) compiled information on large wildfires in the western United States from 1970 to 2004, and found that large wildfire activity has increased significantly from the mid-1980s with large-wildfire frequency, longer wildfire duration, and longer wildfire seasons. The greatest increases occurred in high-elevation forest types including lodgepole pine and spruce fir in the northern Rockies. They also found that fire exclusion had little impact on natural fire regimes. Rather, climate appeared to be the primary driver of increasing wildfire risk. Lastly, climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6,074; Cook *et al.* 2004, p. 1,015).

Review of climate change modeling presented in Utzig (2005, p. 5) demonstrated projected shifts in habitats within the present range of the southern mountain caribou DPS in Canada. Projections for 2055 indicate a significant decrease in alpine habitats, which is loosely correlated with the distribution of the arboreal lichens on which these caribou depend. The projected biogeoclimatic zone distributions indicate a significant increase in the distribution of western red cedar in the mid-term with a shift upward in elevation and northward over the longer term. Projected subalpine fir distribution is similar, with a predicted

shift upward in elevation and long-term decreasing presence in the south and on the drier plateau portions of the present range of the southern mountain caribou DPS. More recent analysis by Utzig (2012, pp. 11–15) suggests that while western red cedar will maintain a significant presence throughout the southern portion of the DPS, spruce fir forests and alpine parkland will approach near elimination by the 2080s. Similarly, Rogers *et al.* (2011, pp. 5–6) analysis of three climate projection models indicate that subalpine forests (which contain subalpine fir) may be almost completely lost in the Pacific Northwest (Washington and Oregon) by the end of the 21st century. The loss of subalpine and alpine parkland would be detrimental to the southern mountain caribou DPS given the population's reliance on these habitat types for forage of arboreal lichens during the late winter and for summer habitat (Utzig 2005, p. 2). Thus, habitat in the southern extent of the southern mountain caribou DPS may become unsuitable, thereby restricting the southern range of this southern mountain caribou DPS (Rogers *et al.* 2011, pp. 5–6).

The movements of subpopulations within the southern mountain caribou DPS are closely tied to changes in snow depth and consolidation of the snow pack, allowing access to arboreal lichens in winter (Kinley *et al.* 2007, entire). Snowpack depth is significant in determining the height at which arboreal lichens occur on trees, and the height at which caribou are able to access lichens in the winter. These arboreal lichens are also dependent upon factors influenced by climate, including humidity and stand density (Utzig 2005, p. 7). Kinley *et al.* (2007, entire) found that during low snow years, mountain caribou in deep-snowfall regions made more extensive use of low-elevation sites (sometimes associated with the use of stands of lodgepole pine (*Pinus contorta*) and western hemlock) during late winter. When snowpack differences were slight between years in these regions, mountain caribou did not shift downslope as they did during low snow years (Kinley *et al.* 2007, p. 93). In general, climate change projections suggest reduced snowpacks and shorter winters, particularly at lower elevations (Utzig 2005, p. 7; Littell *et al.* 2009, p. 1). Consistently lower snowpacks (similar to what is projected with climate change) at higher elevations may alter the height of lichen growth on trees which may affect seasonal caribou movement patterns. Thus, caribou may

remain at higher elevations throughout winter under various climate change scenarios. Additionally, climate change may increase predation pressure on caribou through altered distribution and abundance of other ungulate species populations.

Projections for 2085 indicate an increase in drier vegetation types at lower elevations. This could potentially cause an increase in other ungulate species such as deer, moose, and elk within the range of the southern mountain caribou DPS (Utzig 2005, p. 4). This may result in increased predator numbers in response to increased prey availability, and increased predation on caribou (Utzig 2005, p. 4). For example, in northern Alberta, changes in summer and winter climate are driving range expansion of white-tailed deer, with further changes expected with continuing climate change (Dawe 2011, p. 153). This increase in white-tailed deer is expected to alter predator-prey dynamics, leading to greater predation on woodland caribou by wolves (Latham *et al.* 2011, p. 204). This potential increase in predation pressure on the southern mountain caribou DPS is in addition to the risk of increased predation due to forest harvesting and fires that reduces and fragments suitable habitat (Stevenson *et al.* 2001, p. 1), as described above.

Virtually all future climate scenarios for the Pacific Northwest project increases in wildfire in western North America, especially east of the Cascades. This is due to higher summer temperatures, earlier spring snowmelt, and lower summer flows, which can lead to drought stress in trees (Littell *et al.* 2009, p. 14). In addition, due to climatic stress to trees and an increase in temperatures more favorable to mountain pine beetles (*Dendroctonus ponderosae*), outbreaks of mountain pine beetles are projected to increase in frequency and cause increased tree mortality (Littell *et al.* 2009, p. 14). These outbreaks will reach higher elevations due to a shift to favorable temperature conditions as these regions warm (Littell *et al.* 2009, p. 14). Other species of insects, such as spruce beetle (*Dendroctonus rufipennis*) and western spruce budworm (*Choristoneura occidentalis*), may also emerge in forests where temperatures are favorable (Littell *et al.* 2009, p. 15). These projected impacts to forested ecosystems have the potential to further impact habitat for the southern mountain caribou DPS through alteration of forest patch size and fragmentation that may facilitate increased predation pressure on caribou, and stand structure that may

reduce forage availability (e.g., arboreal lichens) for caribou (Utzig 2005, p. 8).

The information currently available regarding the effects of global climate change and increasing temperatures does not allow precise estimates of the location and magnitude of the effects. However, we do expect changes in climate such as increasing temperatures will result in the following: A shorter snow season with shallower snowpacks, increased forest disturbance, and vegetation growing in far from optimal climatic conditions (Columbia Mountains Institute of Applied Ecology 2006, p. 49). Utzig (2005, entire) provided the most applicable summary of the potential effects of climate change to the southern mountain caribou DPS. In his paper, he noted that there are general indications that the present range of mountain caribou may be reduced in some areas and increased in others (p. 10), as the ecosystem upon which they rely undergoes drastic future changes due to changes in the form and timing of precipitation events (snow versus rain), and vegetative responses to climatic conditions (e.g., drier conditions will mean increased occurrence of fire and disease in mature trees that support arboreal lichens (p. 8)). These climatic conditions may also increase other ungulate species (deer, moose) and lead to higher levels of predator prey interactions (p. 4). He also identified several uncertainties (pp. 10–11), such as the impossibility of reliably projecting specific ecosystem changes and potential impacts. Utzig (p. 11) acknowledged that caribou survived the last glacial period, as well as intervening climate change over the last 10,000 years, although those changes likely occurred over a longer period of time than the changes occurring today.

Given the above information, we anticipate that changes in climate could directly impact the southern mountain caribou DPS by: (1) Reducing the abundance, distribution, and quality of caribou habitat; (2) limiting the ability of caribou to move between seasonal habitats; and (3) limiting their ability to avoid predation. Impacts from climate change may also affect caribou and their habitat by affecting external factors such as increased disease and insect outbreaks, increased fire occurrence, and changes in snow depth. The impacts from these effects could lead to increased habitat fragmentation and changes in forest composition, changes in forage availability and abundance, and changes in predation, which are each important to caribou survival. Because of the close ties between caribou movement and seasonal snow conditions, seasonal shifts in snow

conditions will likely significantly impact the southern mountain caribou DPS (Utzig 2005, pp. 4, 8). A trend towards hotter and drier summers, increasing fire events, and unpredictable snow conditions has the potential to reduce both recruitment and survival of the southern mountain caribou DPS of mountain caribou (Festa-Bianchet *et al.* 2011, p. 427). A warming climate will negatively affect all aspects of caribou ecology and exacerbate the impact of other threats (Festa-Bianchet *et al.* 2011, p. 424).

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Efforts in the United States: Efforts to protect the southern mountain caribou DPS and its habitat in the United States include: (1) Retaining mature to old-growth cedar/hemlock and subalpine spruce/fir stands; (2) analyzing forest management actions on a site-specific basis to consider potential impacts to caribou habitat; (3) avoiding road construction through mature old-growth forest stands unless no other reasonable access is available; (4) placing emphasis on road closures and habitat mitigation based on caribou seasonal habitat needs and requirements; (5) controlling wildfires within southern Selkirk Mountains woodland caribou management areas to prevent loss of coniferous tree species in all size classes; and (6) managing winter recreation in the Colville National Forest (CNF) in Washington, with specific attention to snowmobile use within the Newport/Sullivan Lake Ranger District.

Relative to human access within caribou habitat, motorized winter recreation, specifically snowmobiling, represents one threat to caribou within the southern Selkirk Mountains woodland caribou recovery area. U.S. Forest Service 1987 land resource management plans (LRMPs) included some standards calling for motorized use restrictions when needed to protect caribou. The CNF's LRMP in Washington has been revised to incorporate special management objectives and standards to address potential threats to woodland caribou on the forest. The CNF also manages winter recreation in areas of potential conflict between snowmobile use and caribou, specifically in its Newport/Sullivan Lake Ranger District (77 FR 71042, November 28, 2012, see p. 71071). The Idaho Panhandle National Forests (IPNF), beginning in 1993, implemented site-specific closures to protect caribou on IPNF. However, more comprehensive standards addressing

how, when, and where to impose such restrictions across IPNF were limited (USFS 1987, entire). In December 2005, a U.S. District Court granted a preliminary injunction prohibiting snowmobile trail grooming within the caribou recovery area on the IPNF during the winter of 2005 to 2006. The injunction was granted because the IPNF had not developed a winter recreation strategy addressing the effects of snowmobiling on caribou. In November 2006, the court granted a modified injunction restricting snowmobiling and snowmobile trail grooming on portions of the IPNF within the recovery area of the southern Selkirk Mountains caribou. On February 14, 2007, the court ordered a modification of the current injunction to add a protected caribou travel corridor, connecting habitat in the U.S. portion of the southern Selkirk Mountains with habitat in British Columbia. This injunction is currently in effect and restricts snowmobiling on 239,588 ac (96,957 ha), involving 71 percent of the existing woodland caribou recovery area. In its revised LRMP (USFS 2015, entire), the IPNF considered the court-ordered snowmobile closure to be the standard until a winter travel plan is approved. The Service will work closely with the IPNF on the future development of their winter recreation strategy, which will be subject to section 7 consultation under the Act.

Within the range of the southern Selkirk Mountains population of woodland caribou is the 43,348-ac (17,542-ha) Salmo-Priest Wilderness area (U.S. Department of Agriculture (USDA) 2013, *in litt.*). The USFS manages these lands under the Wilderness Act of 1964 (16 U.S.C. 1131–1136), which restricts activities in the following manner: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical transport; and (5) no structure or installation may be built.

A recovery plan for the endangered southern Selkirk Mountains population of woodland caribou was finalized in 1994 (1994 recovery plan), outlining interim objectives necessary to support a self-sustaining caribou population in the Selkirk Mountains (USFWS 1994a, entire). Among these objectives was a goal to secure and enhance at least 443,000 ac (179,000 ha) of caribou habitat in the Selkirk Mountains. However, the recovery criteria in this recovery plan were determined to be inadequate in the Service's 5-year review (USFWS 2008, p. 15). Additional

recovery actions are needed as the 2015 population estimate for this subpopulation has dropped to 14 individuals, which continues a steady decline from 46 caribou in 2009 (Degroot 2015, *in litt.*). In addition, the 1994 recovery plan only applies to 1 subpopulation (southern Selkirk Mountain population of woodland caribou) of the 15 extant subpopulations that comprise the southern mountain caribou DPS.

Efforts in Canada: In 2007, the British Columbia government endorsed the Mountain Caribou Recovery Implementation Plan (MCRIP), which encompasses the southern mountain caribou DPS in Canada (British Columbia Ministry of Agriculture and Lands (BCMAL) 2007, *in litt.*). The plan's goal is to restore the southern mountain caribou DPS in British Columbia to the pre-1995 level of 2,500 individuals (BCMAL 2007, *in litt.*). Actions identified in the MCRIP include, but are not limited to: Protecting approximately 5,436,320 ac (2,200,000 ha) of range from logging and road building, which would capture 95 percent of high-suitability winter habitat; managing human recreation activities; managing predator populations of wolf and cougar where they are preventing recovery of populations; managing the primary prey base of caribou predators; and augmenting threatened herds with animals translocated from elsewhere (BCMAL 2007, *in litt.*). The Province of British Columbia pledged to provide \$1,000,000 per year, over 3 years, to support adaptive management plans associated with the MCRIP (BCMAL 2007, *in litt.*).

As stated above, one of the tools of the 2007 MCRIP for achieving recovery of mountain caribou is augmentation of small subpopulations with caribou translocated from other areas. Pursuant to the 2007 MCRIP, an augmentation plan for the Purcells South Mountain Caribou Population was finalized in 2010, and included a goal of achieving a population target of 100 caribou through augmenting 40 caribou into the Purcell South subpopulation over 2 years (Cichowski *et al.* 2014 *in litt.*, p. ii). Twenty caribou were captured in March 2012 (first phase) from the Level-Kawdy subpopulation in northwestern British Columbia (located outside of the southern mountain caribou DU/DPS), fitted with radio collars, and 19 of the caribou (1 caribou died prior to release) were augmented into the Purcell South subpopulation located in south-eastern British Columbia, within the southern mountain caribou DU/DPS. As of the 2013 annual report, 17 of the 19 caribou

have died (6 due to cougar predation; 2 due to wolf predation; 3 due to accidents; 3 from unknown but confirmed non-predation causes; 2 from unknown causes, predation not ruled out; and 1 from malnutrition due to ticks) (Gordon 2013 *in litt.*, p. 1). The satellite collars on the two remaining caribou failed. However, the remaining cow was sighted approximately 112 mi (180 km) north of the Purcells South range, and when the collar on the remaining bull failed, he was utilizing high-elevation habitat with resident caribou and is presumed to still be with the resident group (Cichowski *et al.* 2014 *in litt.*, p. 2). Implementation of the second phase has not been initiated.

All national parks in Canada are managed by Parks Canada, and are strictly protected areas where commercial resource extraction and sport hunting are not permitted (Parks Canada National Park System Plan (NPSP) 2009, p. 3). Parks Canada's objective for their national parks is, "To protect for all time representative natural areas of Canadian significance in a system of national parks, to encourage public understanding, appreciation, and enjoyment of this natural heritage so as to leave it unimpaired for future generations" (Parks Canada NPSP 2009, p. 2). The southern mountain caribou DPS in British Columbia encompasses two Canadian national parks, Glacier and Mount Revelstoke. Both of these national parks comprise 333,345 ac (134,900 ha) and are within the range of several subpopulations of caribou in the southern mountain caribou DPS (Parks Canada NPSP 2009, pp. 18–19). Ninety-four percent of the land in British Columbia is considered Provincial Crown lands, of which 33,881,167 ac (13,711,222 ha) are designated as various park and protected areas managed by British Columbia (B.C.) Parks (B.C. Parks 2013a, *in litt.*). The mission of B.C. Parks is to "protect representative and special natural places within the province's Protected Areas System for world-class conservation, outdoor recreation, education and scientific study" (B.C. Parks 2013b, *in litt.*). Many Canadian national parks, provincial parks, and ecological reserves, including Arctic Pacific Lakes, Evanoff, Sugarbowl-Grizzly Den, Ptarmigan Creek, West Twin, Close to the Edge, Upper Rausch, Mount Tinsdale, Bowron Lake, Cariboo Mountains, Wells Gray, Upper Adams, Foster Arm, Cummins Lakes, Goosegrass, Glacier, Mount Revelstoke, Monashee, Goat Range, Purcell Wilderness, Kianuko, Lockhart Creek, West Arm, and Stagleapare, are

regularly or occasionally occupied by subpopulations or individuals of mountain caribou and these areas provide some level of protection.

In February 2009, British Columbia's Ministry of Environment (BCMOE) protected 5,568,200 ac (2,253,355 ha) of currently available and eventually available high-suitability winter caribou habitat. This was accomplished through the issuance of 10 Government Actions Regulation (GAR) orders on Provincial Crown lands within the southern mountain caribou DPS (BCMOE 2009a, *in litt.*; BCMOE 2009b, *in litt.*; Mountain Caribou Recovery Implementation Plan Progress Board (MCRIPPB) 2010, pp. 7, 9). This protection was accomplished, in part, through the official designation of high-suitability habitats as either wildlife habitat areas or ungulate winter ranges, and associated general wildlife measures (BCMOE 2009b, *in litt.*). These measures were designed to reduce the impact from timber harvest and road construction on caribou habitat. They identified areas where no or modified timber harvesting can take place, along with certain motor vehicle prohibition regulations (BCMOE 2009b, *in litt.*; BCMOE 2009c, *in litt.*). This effort included the creation of two important guidance documents that provide recommendations for the establishment of mineral exploration activity and commercial backcountry recreation (*i.e.*, heli-skiing and cat-skiing). Both of these documents call for their respective activities to maximize use of existing roads and clearings, and specify other activity-specific restrictions on habitat alteration (Hamilton and Pasztor 2009, pp. 7–8; BCMOE 2009c, *in litt.*).

In February 2009, the BCMOE closed approximately 2,471,050 ac (1,000,000 ha) of caribou habitat within the Canadian portion of the southern mountain caribou DPS to snowmobile use (MCRIPPB 2010, p. 10). However, compliance with closures in these areas is not well known, and is likely not 100 percent (MCRIPPB 2012, p. 9). Efforts and progress are being made to replace stolen or vandalized signs, to improve monitoring and enforcement of compliance, and to inform and educate the users about the closed areas. Specifically, several tickets have been issued in British Columbia for noncompliance, and informational pamphlets have been made and distributed (MCRIPPB 2010, p. 10; MCRIPPB 2012, p. 9).

Under SARA, Federal, provincial, and territorial government signatories agreed to establish complementary legislation and programs that provide effective protection of species at risk throughout Canada (Environment Canada 2014, p.

i). SARA requires Federal competent ministers to prepare recovery strategies for species listed under SARA (Environment Canada 2014, p. i). The Minister of the Environment and the Minister responsible for the Parks Canada Agency are the competent ministers under SARA for southern mountain caribou (Environment Canada 2014, p. i). In 2014, in accordance with SARA, the BCMOE published the Recovery Strategy for the Woodland Caribou, Southern Mountain population (*Rangifer tarandus caribou*) in Canada (2014 Canadian Recovery Strategy) that set forth a recovery goal of achieving a self-sustaining population of 2,500 caribou in the southern mountain caribou DU (Environment Canada 2014, p. 29). The 2014 Canadian Recovery Strategy will be followed by development of action plans identifying recovery measures to be taken by the Environment Canada, the Parks Canada Agency, and the Province of British Columbia (Environment Canada 2014, p. i). The 2014 Canadian Recovery Strategy identified several actions that are already completed or are underway including, but not limited to:

- Consideration of southern mountain caribou habitat requirements when planning and implementing forest harvesting and other industrial activities, including prohibition of forest harvesting and road building activities in 2.2 million ha (5.4 million ac) (e.g., Ungulate Winter Ranges, protected areas) to protect high suitability habitat for southern mountain caribou in the Southern Group (also defined as the southern mountain caribou (DU 9)) in British Columbia;
- Consideration of southern mountain caribou habitat when planning and implementing prescribed fires in national parks and on other lands, including conducting prescribed fires in areas away from caribou habitat to maintain a safe distance between caribou and predators;
- Closure to snowmobiling of 1 million ha (2.5 million ac) of high-elevation habitat within ranges of southern mountain caribou in the Southern Group in British Columbia;
- Development and implementation of operating procedures for helicopter and snowcat skiing in southern mountain caribou in the Southern Group in British Columbia;
- Development and implementation of operating guidelines for industrial development within southern mountain caribou ranges;
- Land-use planning to identify areas within southern mountain caribou ranges where southern mountain caribou conservation is prioritized;

- Reduced speed zones on highways in important caribou habitat;
- Predator and alternate prey management projects in some ranges where subpopulations of southern mountain caribou are declining; and
- Population augmentation through translocations and reduction of early calf mortality through maternal penning.

In addition, implementation of voluntary stewardship management agreements in British Columbia may contribute to conservation of the southern mountain caribou DPS. These agreements are between the BCMOE and snowmobiling groups, and promote the minimization of disturbance and displacement of caribou from snowmobile activities in their habitat. Through these agreements, snowmobile groups agree to abide by a code of conduct while riding in designated areas, volunteer to educate riders about impacts to caribou and preventative measures to avoid impacts, volunteer to monitor designated areas for compliance, and submit reports to the BCMOE detailing caribou sightings and snowmobile use of an area. To date, 13 of these agreements have been signed between the BCMOE and snowmobile organizations (MCRIPPB 2010, p. 10). Finally, a maternal penning trial is being implemented near Revelstoke, British Columbia, Canada, and a memorandum of understanding has been signed between Parks Canada and the Calgary Zoo to develop captive breeding capacity for mountain caribou (MCRIPPB 2014, p. 5).

Private Efforts: Approximately 135,908 ac (55,000 ha) of private land within the British Columbia portion of the southern Selkirk Mountains caribou recovery area were purchased by the Nature Conservancy Canada (NCC). This purchase was made with the support of the Government of Canada in what has been described as the largest single private conservation land acquisition in Canadian history (USFWS 2008, p. 17). This private land was previously owned by a timber company known as the Pluto Darkwoods Forestry Corporation, which managed a sustainable harvesting program prior to selling the land. The NCC's goal for the Darkwoods property is sustainable ecosystem management, including the conservation of woodland caribou (USFWS 2008, p. 17).

Summary for Factor A

Destruction, modification, or curtailment of caribou habitat has been and is today a significant threat to caribou throughout the southern mountain caribou DPS. Specific threats directly impacting caribou habitat

within the southern mountain caribou DPS include forest harvest, forest fires, insect outbreaks, human development, recreation, and effects of climate change. Each of these threats, through varying mechanisms, directly removes and fragments existing habitat and/or impacts caribou behavior such that it alters the distribution of caribou within their natural habitat.

Forest harvest, forest fires, insect outbreaks, human development, and effects due to climate change may catalyze other indirect threats to caribou within the southern mountain caribou DPS. These impacts may be particularly prevalent in the southern extent of this DPS. Specifically, direct habitat loss and fragmentation further limits caribou dispersal and movements among subpopulations within the southern mountain caribou DPS by making it more difficult and more dangerous for caribou to disperse. Additionally, habitat loss and fragmentation have and will continue to alter the predator-prey ecology of the southern mountain caribou DPS by creating more suitable habitat and travel corridors for other ungulates and their predators. Finally, habitat loss and fragmentation increases the likelihood of disturbance of caribou in the southern mountain caribou DPS from human recreation or other activities by increasing the accessibility of these areas to humans. Projections of changes in climate indicate that the changes will exacerbate impacts by catalyzing forest composition changes; increasing forest insect outbreaks; and increasing the likelihood of wildfires through changes in phenology, precipitation (both timing and quantity), and temperature.

Another threat, human disturbance from wintertime recreation, particularly from snowmobile activity, increases physiological stress and energy expenditure, and alters habitat occupancy of caribou. This disturbance forces caribou to use inferior habitat with greater risk of depredation or avalanche. Human disturbance is likely to continue to increasingly impact caribou within the southern mountain caribou DPS because nature-based recreation and tourism are on the rise in rural British Columbia. Projected growth of these activities is estimated at approximately 15 percent per year (Mitchell and Hamilton 2007, p. 3). In addition, the establishment of new forest roads may be providing increased human access to caribou habitat, further amplifying the threat of human disturbance and caribou population declines within the southern mountain caribou DPS in the future. Impacts to caribou from human disturbance are

occurring today, despite conservation measures, and are likely to occur in the future. These impacts will likely contribute to the decline of subpopulations within the southern mountain caribou DPS and further impact the continued existence of the southern mountain caribou DPS.

We have evaluated the best available scientific and commercial data on the present or threatened destruction, modification, or curtailment of the habitat or range of the southern mountain caribou DPS. Through this evaluation, we have determined that the activities identified under this factor pose significant threats to the continued existence of the southern mountain caribou DPS, especially when considered in concert with the other factors impacting the southern mountain caribou DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Caribou have been an important game species since they have shared the landscape with humans. Native Americans have hunted caribou for thousands of years in British Columbia, although the numbers of animals taken were probably modest given the relatively limited hunting pressure and hunting implements at the time (Spalding 2000, p. 38). The introduction of firearms combined with a later increase in human populations in British Columbia led to an increase in caribou harvested by the late 1800s and into the 1900s (Spalding 2000, p. 38).

It is thought that an increase in hunting pressure, although it did not cause extinction, upset the already delicate balance between predators and caribou and catalyzed a general decline in caribou populations (Seip and Cichowski 1996, p. 73; Spalding 2000, p. 39). In support of this hypothesis, Spalding (2000, p. 39) cited old field reports that hunters, both Native American and non-Native American, were killing too many caribou. He also cited several regions of British Columbia where, after hunting closures were implemented, caribou numbers began to rebound, although this was not the case in all populations (Spalding 2000, p. 37). These hunting pressures and associated population declines subsided with the hunting season closures, and some regions of British Columbia even saw population increases and stabilization after the 1940s (Spalding 2000, pp. 37, 39).

Hunting of caribou is currently not allowed in any of the lower 48 United States. While hunting of mountain caribou is allowed within certain areas

of British Columbia (British Columbia Hunting and Trapping Regulations/Synopsis 2014–2016), according to Chris Ritchie (2015, pers. comm.), there is no legal harvest of mountain caribou allowed within the range of the southern mountain caribou DU/DPS in Canada. Further, hunting is prohibited in all national parks and ecological reserves in British Columbia, but may be allowed in some specific British Columbia parks. Consequently, legal harvest has not been a major limiting factor to caribou within the southern mountain caribou DPS since the mid-1970s (Seip and Cichowski 1996, p. 73). Therefore, although it may have had a historical impact on caribou populations, hunting/harvesting of caribou is not presently impacting caribou within the southern mountain caribou DPS.

Although there are historical reports of the illegal harvest of caribou within the southern mountain caribou DPS (Scott and Servheen 1985, p. 15; Seip and Cichowski 1996, p. 76), we do not have data that suggest illegal killing is affecting caribou numbers in any of the subpopulations within the southern mountain caribou DPS.

Conservation Efforts To Reduce Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Aside from State and Provincial regulations that limit hunting of caribou, we are unaware of other conservation efforts to reduce overutilization for commercial, recreational, scientific, or educational purposes; however, we do not have information suggesting that overutilization is an ongoing threat to caribou within the southern mountain caribou DPS.

Summary for Factor B

Threats from overutilization such as hunting appear to be ameliorated, now and in the future, by responsible management. Historically, caribou within the southern mountain caribou DPS were hunted throughout their range. They were likely overharvested when human populations increased in British Columbia and with the advent of modern weapons. The hunting of caribou has been made illegal within the southern mountain caribou DPS, in both the United States and Canada. After hunting ceased, certain populations began to recover but others did not. Even though there have been known occurrences of humans illegally killing caribou within the southern mountain caribou DPS in the past, we do not have information indicating this is an

ongoing threat. We have evaluated the best available scientific and commercial data on the overutilization for commercial, recreational, scientific, or educational purposes of the southern mountain caribou DPS and determined that activities identified under this factor do not pose threats to the continued existence of the southern mountain caribou DPS.

C. Disease or Predation

Disease

Caribou mortality due to disease and parasitism has been documented throughout their range and within the southern mountain caribou DPS (Spalding 2000, p. 40; Compton *et al.* 1995, p. 493; Dauphine 1975 *in* COSEWIC 2002, pp. 20, 54–55). The effects of many types of biting and stinging insects on caribou include parasite and disease transmission, harassment, and immune system reactions (COSEWIC 2002, p. 54). Several insects with the potential to affect caribou populations include warble flies (*Oedemagena* spp.), nose bot flies (*Cephenemyia trompe*), mosquitoes (*Aedes* spp.), black flies (*Simulium* spp.), horseflies (*Tabanus* spp.), and deer flies (*Chrysops* spp.) (COSEWIC 2002, p. 54). Mature and old woodland caribou are likely to have a relatively high incidence and prevalence of hydatid cysts (*Echinococcus granulosus*) in their lungs, which can make them more susceptible to predation (COSEWIC 2002, p. 54). Eggs and larvae of the protostrongylid nematode (*Parelaphostrongylus andersoni*) can develop in woodland caribou lungs and can contribute to pneumonia (COSEWIC 2002, pp. 54–55). Finally, a related meningeal nematode (*P. tenuis*) causes neurologic disease in caribou. Although this nematode is benign in white-tailed deer, it may be a limiting factor to caribou in southern Ontario and west to Saskatchewan. Samuel *et al.* (1992, p. 629) suggested that this meningeal nematode may anthropogenically spread in western Canada due to game ranching; however, we have no new information to determine if this spread has or has not occurred.

Within the southern mountain caribou DPS, evidence of disease or parasitism is limited. We know that several caribou that were shot or found dead in a forest near Rooney, British Columbia, in 1918 were thought to have a type of pneumonia (Spalding 2000, p. 40). We also know that, of 34 caribou that died within 2 years of translocation to the southern Selkirk Mountains, only one was confirmed to have died of

severe parasitism (*Sarcocystis* sp.) and emaciation (Compton *et al.* 1995, p. 493). Additionally, in 2012, 19 caribou were translocated from the Level-Kawdy subpopulation in northwestern British Columbia into the Purcell Mountains subpopulation in southeastern British Columbia, Canada. Of the 19 translocated caribou, one died from malnutrition due to ticks (Gordon 2013, *in litt.*). Although evidence within the southern mountain DPS is limited, we are aware that a reintroduction effort of 51 caribou outside of the southern mountain caribou DPS in the late 1960s failed, presumably because of meningeal worms (*Parelaphostrongylus tenuis*) (Dauphine 1975 in COSEWIC 2002, p. 20).

As is the case with most wildlife, caribou are susceptible to disease and parasitism. These sources of mortality are likely causing some level of impact to individual caribou within the southern mountain caribou DPS. However, because no severe outbreaks have been documented and because relatively few caribou within the southern mountain caribou DPS have been known to succumb to disease or parasitism, these sources of mortality are unlikely to have significantly impacted caribou within the southern mountain caribou DPS, currently or historically.

Predation

Natural predators of caribou in the southern mountain caribou DPS include cougars (*Felis concolor*), wolves (*Canis lupus*), grizzly bears (*Ursus arctos*), and black bears (*Ursus americanus*) (Seip 2008, p. 1). Increased predation from these natural predators, particularly wolves and cougars, is thought to be the most, or one of the most, significant contributors to southern mountain caribou DPS declines in recent decades (Seip 1992, p. 1,500; Kinley and Apps 2001, p. 161; MCST 2005, p. 4, Wittmer *et al.* 2005b, pp. 414–415). McLellan *et al.* (2012, entire) investigated whether interactions with forage (bottom-up) or predators (top-down) were the principal mechanisms regulating southern mountain caribou populations. They concluded that apparent competition (*i.e.*, predation) is the proximate mechanism driving the population decline of mountain caribou (McLellan *et al.* 2012, p. 859). Apparent competition occurs indirectly between prey populations that share a common food-limited predator, whereby the predator asymmetrically impacts the prey populations (Holt 1977, pp. 201–202), even without resource competition between the prey species. For example, in this case, the numerical response of

predators (*e.g.*, wolves and cougars) to the primary prey (*i.e.*, deer, elk, moose) can depress the population of the secondary prey (*i.e.*, caribou), resembling competition between the prey species. Predation on the secondary prey can be incidental, can increase proportionately as the numbers of secondary prey decline (Sinclair *et al.* 1998 in Wittmer *et al.* 2005a, p. 259), and can lead to extinction of the secondary prey (DeCesare *et al.* 2010, pp. 353, 355). McLellan *et al.* (2012, p. 859) also concluded that food limitation (neither quality nor quantity) is likely not driving the continued population decline of mountain caribou.

As cited previously the decline of this population is accelerating (COSEWIC 2014, p. vii). Wittmer *et al.* (2005b, p. 264) found that predation was the primary cause of mortality driving the accelerated rate of population decline of mountain caribou. The accelerated rate of decline of the overall population composed of small, fragmented, and isolated subpopulations is consistent with the Allee effect² (Stephens *et al.* 1999, p. 186), which predicts population growth rates to decline as populations become smaller. Increased predation pressure on small populations is one example of an Allee effect, but genetic drift can also result in an Allee effect (Stephens *et al.* 1999, p. 185).

Genetic drift can result from rapid changes in gene frequencies caused by environmental and demographic stochasticity independent of mutation and natural selection, and smaller populations are more susceptible to genetic drift. For example, when alleles³ occur at a low frequency in a small population, these alleles have a significant probability of being lost in each generation. The gradual loss of rare alleles from a population changes the overall genotype of the population, and ultimately results in a loss of genetic variability. Serrouya *et al.* (2012, p. 2,597) demonstrated that below a population size of approximately 150 caribou, the magnitude and variation of genetic differentiation greatly increased between pairs of adjacent subpopulations (*i.e.*, genetic drift). In summary, genetic drift reduces genetic variation in populations, potentially reducing a population's ability to evolve in response to new selective pressure, and genetic drift acts faster and has

² The Allee effect is a phenomenon in biology characterized by a correlation between population size or density and the mean individual fitness (often measured as per capita population growth rate) of a population or species.

³ One member of a pair of genes occupying a specific spot on a chromosome that controls the same trait.

more drastic results in small populations.

Elevated levels of predation on caribou in the southern mountain caribou DPS have likely been caused, in part, by an alteration of the natural predator-prey ecology within their range (Wittmer *et al.* 2005b, p. 417; Seip 2008, p. 3). This change in the predator-prey ecology within the southern mountain caribou DPS is thought to be catalyzed, at least in part, by human-caused habitat alteration and fragmentation (Seip 2008, p. 3). Habitat alteration and fragmentation within the southern mountain caribou DPS is caused by many things, including, but not limited to, forest harvest, fire, human development, and effects due to climate change (see Factor A discussion, above). Alteration and fragmentation from these and other activities disturb land and create edge habitats. These new edges and disturbances allow for the introduction of early seral habitat that is preferred by deer, elk, and moose, thereby increasing habitat suitability for these alternate ungulate prey species within the southern mountain caribou DPS (Kinley and Apps 2001, p. 162; Seip 2008, p. 3). The increase in habitat suitability for deer, elk, and moose have allowed these alternate prey species to subsist in areas that, under natural disturbance regimes, would have been dominated by contiguous old-growth forest and of limited value to them (Kinley and Apps 2001, p. 162). The result is an altered distribution and increased numbers of these alternative ungulate prey species, particularly within summer habitat of caribou within the southern mountain caribou DPS (Kinley and Apps 2001, p. 162; Wittmer *et al.* 2005a, pp. 263–264). Many studies suggest that increases in alternative ungulate prey within caribou summer habitat have stimulated an associated increase of natural predators, particularly cougars and wolves, in these same areas, consequently disrupting the predator-prey ecology within the southern mountain caribou DPS and resulting in increased predation on caribou (Kinley and Apps 2001, p. 162; Wittmer *et al.* 2005b, pp. 414–415). Additionally, many studies conducted across the range of mountain caribou (Northern, Central, and Southern DUs) as well as the Boreal DU in Canada suggest these populations of caribou are at risk of extirpation where habitat altering industrial activities affect predator-prey dynamics (Festa-Bianchet *et al.* 2011, p. 427).

Habitat alteration and fragmentation has resulted in increased numbers and distribution of other ungulate prey species (*i.e.*, deer, moose, and elk) that

has supported, and continues to support, higher densities of predators which then prey opportunistically on caribou (*i.e.*, apparent competition). It will likely require greater than 150 years (greater than 16 generations of caribou) of habitat protections for early successional and fragmented forests to develop the old-growth habitat characteristics (vegetative structure and composition) (Stevenson *et al.* 2001, p. 1) necessary to restore the natural predator-prey balance of these high-elevation, old-growth forests, and thus reduce predation pressure on caribou. As discussed above under Status of the Southern Mountain Caribou DPS, Hatter (2006, p. 7, *in litt.*) predicted quasi-extinction of 13 of the 15 subpopulations within the DPS within 20 to 90 years, and Wittmer *et al.* (2010, p. 86) predicted extinction of 10 of the 15 subpopulations within 200 years (notably, they did not assess 5 of the subpopulations). Thus, the subpopulations within the DPS are not likely sustainable given ongoing declines and the length of time needed to improve habitat conditions that may ameliorate the threat of predation.

The specific changes to predator/prey ecology are different across the southern mountain caribou DPS. In the northern portion of the DPS, wolf and moose populations have increased. In the southern portion of the DPS, cougar, elk, and deer populations have increased. Because alternate ungulate prey are driving predator abundance in caribou habitat (Wittmer *et al.* 2005b, p. 414), predators may remain abundant in caribou habitat while caribou numbers remain few. This renders one of the caribou's main predator defenses—predator avoidance—relatively ineffective during certain parts of the year.

Alterations in the predator-prey ecology of the southern mountain caribou DPS may also have been catalyzed, in part, by successful game animal management in the southern mountain caribou DPS (Wittmer *et al.* 2005b, p. 415). This too could have helped to increase deer, elk, and moose populations within the southern mountain caribou DPS and led to an increase in ungulate predators, thus impacting caribou.

Conservation Efforts To Reduce Disease or Predation

Disease: We are not aware of any conservation measures currently being implemented to reduce impacts to caribou from disease.

Predation: Increased predation is thought to be the current primary threat affecting caribou within the southern

mountain caribou DPS (Seip 1992, p. 1,500; Kinley and Apps 2001, p. 161; MCST 2005, p. 4, Wittmer *et al.* 2005b, pp. 414–415). Strategies on managing predation may include the management of predator populations directly, or the management of alternate ungulate prey populations. The 2007 Mountain Caribou Recovery Implementation Plan (MCRIP), produced by the BCMOE, proposed that both approaches be taken within the Canadian portion of the southern mountain caribou DPS (MCRIPPB 2010, pp. 1, 12, 13).

Direct management of predator populations within the southern mountain caribou DPS to date has included investigations of the degree of overlap between wolves and caribou home ranges. This research will assist BCMOE with decisions about location and intensity of wolf management or removal (MCRIPPB 2010, p. 12). Currently, BCMOE has authorized removal of wolves from within the southern mountain caribou DPS through hunting and trapping. To date, this program has been implemented only on a limited basis. Initial results suggest this management effort has been successful at reducing wolf densities, but the response by mountain caribou will take several more years to determine (MCRIPPB 2010, p. 12). Finally, a wolf sterilization project is underway in a portion of the southern mountain caribou DPS. This project is a pilot project designed to determine the feasibility and effectiveness of wolf sterilization (MCRIPPB 2010, p. 12). Initial results of this work suggest that some subpopulations are showing a positive response to these sterilization efforts. However, this conclusion is based on a correlation between the two variables and cause-effect has not been demonstrated (Ritchie *et al.* 2012, p. 4). One ongoing study in the Purcells South subpopulation is investigating wolf and cougar overlap with caribou home ranges (MCRIPPB 2012, p. 12).

Direct management of alternate ungulate prey populations within the southern mountain caribou DPS, to date, has been limited. The BCMOE has reported two pilot moose-reduction programs within the southern mountain caribou DPS to determine effectiveness of reducing wolf densities through the management of moose densities in caribou habitat (MCRIPPB 2010, p. 13). These pilot efforts have indicated that reducing moose densities may reduce wolf numbers (MCRIPPB 2011, p. 4).

The BCMOE established a Mountain Caribou Recovery Implementation Progress Board (Board) with the publication of the 2007 MCRIP. The Board was charged with oversight of the

implementation of the MCRIP and monitoring its effectiveness. The Board's 2010 annual report declared that the conservation measures listed above have all been relatively limited in scope and have failed to meet the expectations of the Board (MCRIPPB 2010, p. 4). The Board's annual reports since 2010 have been slightly more favorable in their assessment of the BCMOE's efforts for predator and alternate ungulate prey management. However, it is still apparent that much research and progress still needs to be completed. For example, it is noteworthy that most of the conservation measures listed above target the wolf-moose predator-prey relationship that is the primary driver of predator-prey dynamics in the northern portion of the southern mountain caribou DPS. We were able to find only one record or report of conservation measures that had been implemented to address predation of caribou by cougars, which may be the most salient issue for the small and struggling subpopulations in the southern portion of the southern mountain caribou DPS (Wittmer *et al.* 2005b, pp. 414–415). Given the controversial nature of predator and alternate ungulate prey control for caribou conservation (MCRIPPB 2010, p. 4; MCRIPPB 2012, p. 11), these conservation measures have been and may continue to be slow to develop and difficult to implement.

Efforts at reducing predation in the United States are more limited and not specifically targeted at reducing effects to caribou. In Idaho, caribou are found within game management unit (GMU) 1, which provides recreational hunting opportunities for black bear, mountain lion, and wolves, and also provides a limited trapping season for wolves (Idaho Department of Fish and Game (IDFG) 2012, entire). Within this GMU, between July 1, 2010, and June 30, 2011, 109 mountain lions (IDFG 2011a, p. 6) and 179 black bears (IDFG 2011b, p. 4) were harvested. More recently, from September 1, 2011, through March 31, 2012, 28 wolves were harvested (IDFG 2013, *in litt.*). Washington State provides a limited hunting season for both black bear and mountain lion within GMU 113 (the GMU found in Washington State, Washington Department of Fish and Wildlife (WDFW) 2012, pp. 60–63), and within the critical habitat designated for the southern Selkirk Mountains population of woodland caribou (77 FR 71042, November 28, 2012). Forty-four black bears and 1 mountain lion were harvested in GMU 113 in 2011 (WDFW 2013a, *in litt.*; WDFW 2013b, *in litt.*).

However, wolf hunting or trapping is not allowed in Washington State. As mentioned above, the objectives for these predator hunting and trapping seasons are not to benefit the southern mountain caribou DPS in the United States, and any response in the caribou population is not monitored. As such, any potential effects on caribou survival and population stability from hunting seasons on predators in Idaho and Washington remain unknown.

Summary for Factor C

Predation, particularly from wolves and cougars, is thought to be the most, or one of the most, significant contributors to caribou population declines within the southern mountain caribou DPS in recent decades. Increased predation of caribou within this DPS has likely been caused, in part, by an alteration of the natural predator-prey ecology of the area. This new predator-prey dynamic has been catalyzed by increases in populations of alternative ungulate prey species such as elk, deer, and moose within caribou habitat. Ecosystems that favor these alternate ungulate prey species also favor predators such as wolves and cougars. These changes have likely been catalyzed, in part, by human-caused habitat loss and fragmentation, which increases habitat favorable to alternative ungulate prey species, and consequently attracts increased numbers of predators. Although some conservation measures have been implemented to reduce impacts to subpopulations of caribou from predation, more efficient, intensive, and frequent action is still needed within the southern mountain caribou DPS. We have evaluated the best available scientific and commercial data on disease or predation of the southern mountain caribou DPS and have determined that predation poses a widespread and serious threat to the continued existence of the southern mountain caribou DPS.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to ameliorate the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires that the Service 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 mechanisms

that may minimize any of the threats we describe in threat analyses under the other four factors or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Many different regulatory mechanisms and government conservation actions have been implemented in both the United States and British Columbia in an attempt to alleviate threats to caribou within the southern mountain caribou DPS. Below, we list these existing regulatory mechanisms and consider whether they are inadequate to address the identified threats to the southern mountain caribou DPS.

Federal

U.S. Forest Service: Much of the caribou habitat within the United States is managed by the USFS (289,000 ac (116,954 ha)), although a significant amount of State and private lands (approximately 79,000 ac (31,970 ha)) occur within caribou range as well (USFWS 1994a, p. 21). Land and resource management plans (LRMPs) for the IPNF and the CNF have been revised to incorporate management objectives and standards for caribou. Standards for caribou habitat management have been incorporated into the IPNF’s 2015 and CNF’s 1988 LRMP, respectively. These standards are meant to avoid the likelihood of jeopardizing the continued existence of the species, contribute to caribou conservation, and ensure consideration of the biological needs of the species during forest management planning and implementation actions (USFS 2015, pp. 29–33; USFS 1988, pp. 4–10–17, 4–38, 4–42, 4–73–76, Appendix I).

We acknowledge that LRMPs can be amended or revised. However, LRMPs are typically in place for 15 years or longer, and the Service, other Federal and State agencies, and the public would have opportunities to comment on any proposed amendments or revisions to the IPNF and/or CNF LRMPs through the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) process. Therefore, we expect that both the IPNF and CNF will continue managing for caribou and their habitat into the future.

The CNF’s LRMP in Washington has been revised to incorporate special management objectives and standards to address potential threats to woodland

caribou on the CNF. The CNF also manages winter recreation in areas of potential conflict between snowmobile use and caribou, specifically in its Newport/Sullivan Lake Ranger District (77 FR 71042, November 28, 2012, see p. 71071). The IPNF, beginning in 1993, implemented site-specific closures to protect caribou on the IPNF. However, more comprehensive standards addressing how, when, and where to impose such restrictions across the IPNF were limited (USFS 1987, entire). In December 2005, a U.S. district court granted a preliminary injunction prohibiting snowmobile trail grooming within the caribou recovery area on the IPNF during the winter of 2005 to 2006. The injunction was granted because the IPNF had not developed a winter recreation strategy addressing the effects of snowmobiling on caribou. In November 2006, the court granted a modified injunction restricting snowmobiling and snowmobile trail grooming on portions of the IPNF within the southern Selkirk Mountains caribou recovery area. On February 14, 2007, the court ordered a modification of the current injunction to add a protected caribou travel corridor connecting habitat in the U.S. portion of the southern Selkirk Mountains with habitat in British Columbia. This injunction is currently in effect and restricts snowmobiling on 239,588 ac (96,957 ha), involving 71 percent of the existing woodland caribou recovery area. In its revised LRMP (USFS 2013, entire), the IPNF considered the court-ordered snowmobile closure to be the standard until a winter travel plan is approved. The Service will work closely with the IPNF on the future development of their winter recreation strategy. To date, the IPNF has not completed a winter recreation strategy. For additional information, under the Factor A analysis, above, see *Efforts in the United States* under “Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range.”

State

Idaho Department of Fish and Game (IDFG): The woodland caribou within Idaho are considered a Species of Greatest Conservation Need by IDFG under Idaho State’s Comprehensive Wildlife Conservation Strategy that provides a framework enabling development of partnerships to jointly develop and implement long-term conservation plans for species of greatest conservation need (<https://idfg.idaho.gov/wildlife/comprehensive-wildlife-strategy>; accessed on November 3, 2016). There are historical reports of

the illegal harvest of caribou within the southern mountain caribou DPS (Scott and Servheen 1985, p. 15; Seip and Cichowski 1996, p. 76). However, we do not have data that suggest illegal killing is affecting caribou numbers in any of the subpopulations within the southern mountain caribou DPS, and we do not consider this to be a threat to the species.

Idaho Department of Lands: The Idaho Department of Lands (IDL) manages approximately 51,000 ac (20,639 ha) of southern mountain caribou DPS habitat in the United States. These lands are managed primarily for timber harvest, an activity that has, currently and historically, the potential to significantly impact caribou and their habitat. The IDL contracted for a habitat assessment of their lands within the South Selkirk ecosystem (Kinley and Apps 2007, entire). The results of this assessment indicated that one of the largest blocks of high-priority caribou habitat in the United States is centered on IDL property and adjacent USFS lands. The report stated that IDL property contributes significantly to caribou habitat within the South Selkirk ecosystem. The IDL, with financial assistance from the Service, began working on a habitat conservation plan (HCP) several years ago to protect caribou and other listed species on their lands. However, development of this HCP has not moved forward beyond the initial stages. Recently, winter motorized use restrictions were loosened on some IDL endowment land in the Abandon Creek area north of Priest Lake. Under a revised winter access plan, lands will remain open to winter motorized use unless there is a confirmed caribou sighting (Seymour 2012, *in litt.*). Because their timber harvest plans currently do not incorporate considerations for caribou and because of the recent removal of snowmobile restrictions, management of IDL's lands is likely not alleviating or addressing the threat of habitat loss, habitat fragmentation, or disturbance from winter recreation to caribou.

Washington Department of Fish and Wildlife: The southern Selkirk Mountains population of woodland caribou was listed as endangered in the State of Washington in 1982 (WDFW 2011, p. 38). In addition, this population within Washington is considered a Species of Greatest Conservation Need by WDFW (WDFW 2005, p. 620). A \$12,000 criminal wildlife penalty is assessed by WDFW for illegally killing or possessing a caribou in Washington State (WDFW 2012, p. 73). We do not have data that suggest illegal killing is affecting caribou numbers in any of the

subpopulations within the southern mountain caribou DPS, and we do not consider this to be a threat to the species that needs to be addressed by a regulatory mechanism.

Canada

The woodland caribou southern mountain population, which includes the southern mountain caribou DPS (which is equivalent to Canada's southern mountain DU), is protected as threatened under Canada's Species at Risk Act (SARA) (Statutes of Canada (S.C.) chapter 29).⁴ However, as noted previously, COSEWIC has recommended that the southern mountain DU be listed as endangered under SARA (COSEWIC 2014, pp. iv, xix) pending review and decision by the Federal Environment Minister. "Endangered" is defined by SARA as a wildlife species that is facing imminent extirpation or extinction. SARA defines a "threatened" species as "a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction" (S.C. chapter 29, section 2). It is illegal to kill, harm, harass, capture, or take an individual of a wildlife species that is listed as an endangered or a threatened species (S.C. chapter 29, section 32). SARA also prohibits any person from damaging or destroying the residence of a listed species, or from destroying any part of its critical habitat (S.C. chapter 29, sections 33, 58). For species that are not aquatic species or migratory birds, however, SARA's prohibition on destruction of the residence applies only on Federal lands. Most lands occupied by the woodland caribou southern mountain population are not Federal; hence, SARA does little to directly protect the population's habitat.

The woodland caribou southern mountain population was assigned the status S1 in 2003, by the Province of British Columbia, meaning it is considered critically imperiled there (BCMOE 2013, *in litt.*). The Province of British Columbia does not have endangered species legislation. This lack of legislation can limit the ability to enact meaningful measures for the protection of status species such as caribou, especially as it relates to their habitat (Festa-Bianchet *et al.* 2011, p. 423). However, British Columbia has

⁴ The southern mountain population of woodland caribou is a broader outdated grouping of caribou that was based on Canada's "National Ecological Areas" (NEAs) established by COSEWIC in 1994 (COSEWIC 2002, pp. 7, 18–19). Please see our response to Comment (2), below, for a more completed description of historical woodland caribou groupings in Canada.

enacted two separate pieces of legislation that can provide protections for imperiled species, the Forest and Range Practices Act (FRPA) and the Wildlife Act (WA).

The FRPA enables the BCMOE to regulate road building, logging, reforestation, and grazing through passage of Government Act Regulations (GARs) to protect ungulate winter range and wildlife habitat areas. As described previously through passage of GARs, BCMOE has protected over 5 million ac (over 2 million ha) of high-quality ungulate winter range from road building and logging, which equates to protecting greater than 95 percent of high-quality caribou habitat in British Columbia (Ritchie 2015, pers. comm.). The WA enables BCMOE to establish wildlife management areas and issue regulations pertaining to the management of such areas. In accordance with the WA, BCMOE has prohibited recreational snow machine use on almost 2.5 million ac (over 1 million ha) of mountain caribou habitat. Additionally, the WA contains provisions allowing BCMOE to develop and implement predator management plans. The British Columbia's Ministry of Forests, Lands and Natural Resource Operations prepared the Management Plan for the Gray Wolf in British Columbia as advice to the responsible jurisdiction and organizations that may be involved in managing gray wolves in British Columbia. Recommendations in the plan are used by provincial agencies to guide the development of new, or modification of existing, provincial policies and procedures. Consistent with that plan and in accordance with the WA, BCMOE has implemented projects to reduce wolf predation on mountain caribou.

The British Columbia's Ministry of Forests, Lands and Natural Resource Operations currently does not allow hunting of caribou within the area where the southern mountain population of caribou occurs. The woodland caribou southern mountain population and its habitat are also protected by the National Parks Act in numerous national parks in Canada (Canada 2013, *in litt.*). Because of its threatened status, the British Columbian government has endorsed the MCRIP, which encompasses the southern mountain caribou DPS in Canada (British Columbia Ministry of Agriculture and Lands (BCMAL) 2007, *in litt.*). For further information on caribou conservation efforts in Canada, under the Factor A analysis, above, see *Efforts in Canada* under "Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its

Range” and under the Factor C analysis, above, see “Conservation Efforts to Reduce Disease or Predation.”

Substantial progress has been made for certain MCRIP goals, such as protecting habitat through government actions regulation (GAR) orders in British Columbia. However, other goals, such as reducing the effects from predation and habitat restoration, have seen less progress made. Additional work and time are still needed to implement all goals identified in the MCRIP to adequately reduce threats to the southern mountain population of caribou in Canada.

Local Ordinances

The Service sought but was unable to find any local regulatory mechanisms addressing caribou habitat management or protection within the United States or Canada.

Private

Currently, we are unaware of any regulatory mechanisms addressing caribou habitat management or protection on private lands within the United States.

Summary for Factor D

The vast majority of caribou habitat in the Selkirk Mountains of the United States is located on USFS land, specifically the CNF and IPNF. Both the CNF and IPNF have incorporated caribou habitat management standards into their LRMPs. Therefore, we expect both the CNF and IPNF to continue managing for caribou and their habitat into the future.

While the IDL also manages a substantial portion of caribou habitat within the southern Selkirk Mountains subpopulation, they are not required to manage their land for caribou. The IDL’s land management plans, particularly timber harvest plans, do not currently consider caribou and do not address the identified threats to woodland caribou. IDL does consider caribou in their winter access plan and has, in the past, closed snowmobile trails to prevent winter disturbance; however, some of these trail closures have been recently relaxed and will remain open to winter motorized use unless there is a confirmed caribou sighting. Because IDL’s land management plans, including timber harvest and winter access, do not consider woodland caribou, we conclude that management of IDL’s lands is likely not alleviating or addressing the threat of habitat loss, habitat fragmentation, or disturbance from winter recreation to caribou within the Selkirk Mountains subpopulation.

Hunting regulations at the national and State levels provide adequate protections regarding the legal take of caribou in the United States. We do not have data that suggest illegal killing is affecting caribou numbers in any of the subpopulations within the southern mountain caribou DPS, and we do not consider this a threat to the species.

In Canada, the southern mountain caribou DPS is protected as threatened at the national level under SARA, while British Columbia considers them to be critically imperiled. British Columbia, Canada, has also enacted legislation (*i.e.*, Forest and Range Practices Act, Wildlife Act) that enables the BCMOE to implement regulations for the protection of wildlife, which it has done for caribou. A recovery plan, the MCRIP, has been endorsed by British Columbia. While efforts have been made towards meeting the goals identified in that recovery plan, additional work and time are needed to meet all the goals. Presently, there is not a hunting season in Canada for caribou within the southern mountain caribou DPS.

Caribou subpopulations continue to decline within the southern mountain DPS despite regulatory mechanisms being in place in the United States and Canada. However, U.S. Federal and State, and Canadian national and provincial, regulations are providing some protection for the caribou within the southern mountain caribou DPS. The current status of caribou habitat is largely an artifact of historical (and in some cases current) silvicultural practices and wildfires that reset the successional forest stage and structure favoring early successional ungulate species (*e.g.*, deer, elk, moose) that in turn support higher densities and distribution of predators that prey opportunistically on caribou. The reality is that it will require several decades of appropriate forest management to reduce habitat fragmentation and achieve the old-growth forest structure that will begin to restore the natural predator-prey ecology of this ecosystem and, thus, reduce the predation pressure on caribou. Remedies to address threats such as control of predators are not logistically easy to implement, may be expensive to address, and may meet social resistance.

We have determined that, while existing regulatory mechanisms in the United States and Canada enable both the United States and Canada to ameliorate to some extent the identified threats to the southern mountain caribou DPS, the existing mechanisms do not completely alleviate the potential for the identified threats to adversely

affect the status of southern mountain caribou and their habitat.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Avalanches and Stochastic Events

As explained previously, predation and genetic drift are two examples of demographic stochasticity that can negatively impact the status of these small, fragmented mountain caribou subpopulations. Mountain caribou, because they live in high-elevation, steep habitats that receive deep winter snowfall, are also susceptible to environmental stochastic factors such as avalanches. According to Seip and Cichowski (1996, p. 76), avalanches are a natural source of mortality to caribou. This has been a notable threat to caribou within the Revelstoke area of Canada, within the southern mountain caribou DPS, where the terrain is particularly steep and rugged with very high snowfall (Seip and Cichowski 1996, p. 76). Although avalanches are generally a natural phenomenon, the threat of avalanches to caribou may be increasing because caribou may be displaced into steeper, more avalanche-prone terrain during the winter from snowmobile and other winter recreational activities (Simpson 1987, p. 1; Seip and Cichowski 1996, p. 79).

Threats of all stochastic events such as avalanches become more serious as subpopulations become isolated and population numbers decrease. This is the case in the southern extent of the southern mountain caribou DPS. For example, a small population of fewer than 10 individuals in Banff National Park (just outside the southern mountain caribou DPS) was extirpated in April of 2009, from a single avalanche event (Hebblewhite *et al.* 2010, p. 342).

As discussed in “Biology” under *Species Information* in our proposed rule (79 FR 26504, May 8, 2014, see p. 26507), caribou also have low reproductive rates compared to other cervids, with females typically reproducing for the first time at 3 years of age and producing only a single calf per year (Cichowski *et al.* 2004, p. 230; Shackleton 2010, p. 1). This low reproductive rate can affect the resiliency⁵ of the subpopulation to withstand demographic and environmental stochastic impacts. Calf

⁵ Resiliency describes the ability of a species to withstand stochastic disturbance. Resiliency is positively related to population size and growth rate, and may be influenced by connectivity among populations. Generally speaking, populations need abundant individuals within habitat patches of adequate area and quality to maintain survival and reproduction in spite of disturbance.

mortality averages 50 to 70 percent within their first year (COSEWIC 2002, p. 35). Low reproductive rates and high calf mortality reduce the resiliency of the subpopulation.

Additionally, the two subpopulations predicted not to be extirpated within 90 years are located at the far north of the DPS's range; in fact, they are the two most northern subpopulations within the DPS. Thus, after 90 years, it is predicted that the DPS will have been extirpated from over 65 percent of its current range, including most of the southern portion, which would severely reduce representation⁶ of the southern mountain caribou DPS within its range. Based on observed declines in abundance, the subpopulations that may remain are already exhibiting reduced resiliency. Therefore, the decreased redundancy⁷ and reduced resiliency of the southern mountain caribou DPS places it at greater risk of extinction sooner than 100 years as predicted by Wittmer (2004, p. 88), due to existing demographic and environmental stochastic factors.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are not aware of any conservation measures currently being implemented to reduce impacts to caribou from avalanches or other stochastic events.

Summary for Factor E

Caribou are susceptible to stochastic events such as avalanches due to small subpopulation sizes and isolation of these subpopulations. Subpopulations are increasingly at risk from impacts of stochastic events as they become more isolated and their population numbers decline. The threat from avalanches is amplified further when caribou are displaced from their preferred habitat into steeper, more dangerous habitat as a consequence of human recreation. Therefore, we have determined these other natural or manmade factors affecting its continued existence pose threats to the continued existence of the southern mountain caribou DPS.

⁶Representation describes the ability of a species to adapt to changing environmental conditions overtime. It is characterized by the breadth of genetic and environmental diversity within and among populations.

⁷Redundancy describes the ability of a species to withstand catastrophic events. It is about spreading risk among multiple populations to minimize the potential loss of the species from catastrophic events. Redundancy is characterized by having multiple, resilient populations distributed within the species' ecological settings and across the species' range.

Cumulative Effects

As alluded to in the discussions above, many of the causes of caribou population declines are linked, often by the threat of habitat alteration. For example, predation is one of the most significant threats to caribou within the southern mountain caribou DPS. Predation is directly linked, in part, to habitat alteration and the associated introduction of early seral vegetation and the creation of roads within caribou habitat in the southern mountain caribou DPS. Specifically, the introduction of early seral habitat and new forest roads has altered the predator/prey ecology of the southern mountain caribou DPS by creating suitable habitat for alternate ungulate prey and accessibility for their predators, respectively, into caribou habitat. Human disturbance, another of the threats to caribou within the southern mountain caribou DPS, is also linked to habitat alteration because of the increased accessibility of caribou habitat that new forest roads have provided. Habitat alteration, in turn, is directly tied to and caused by another, and possibly two other, threats listed above—human development and climate change. Specifically, human development and the resources it requires, probably in concert with climate change, have altered caribou habitat within the southern mountain caribou DPS. This alteration has occurred through forest harvest and the creation of new infrastructure. It is reasonable to expect that human development and the resources it demands will continue to alter and fragment caribou habitat in the future. This, in turn, will continue to promote altered predator/prey ecology and associated increases in caribou predation, and human disturbance in caribou habitat within the southern mountain caribou DPS. The suite of all these related threats, combined with each other, have posed and continue to pose a significant threat to caribou within the southern mountain caribou DPS.

Summary of Comments and Recommendations

In the proposed rule published on May 8, 2014 (79 FR 26504), we requested that all interested parties submit written comments on the proposal by July 7, 2014. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were

published in the Lewiston Morning Tribune, Idaho Statesman, Coeur d'Alene Press, Spokesman Review, Bonners Ferry Herald, Bonner County Daily Bee, Priest River Times, and The Miner. Subsequently, on June 10, 2014, we extended the public comment period until August 6, 2014 (79 FR 33169). We received requests for public hearings. Public informational sessions and hearings were held on June 25, 2014, in Sandpoint, Idaho, and on June 26, 2014, in Bonners Ferry, Idaho (79 FR 33169). On March 24, 2015, we reopened the public comment period for an additional 30 days, ending on April 23, 2014, to allow the public time to review new scientific information received after the previous public comment period (80 FR 15545). We also reopened the public comment period on April 19, 2016, for an additional 30 days, ending on May 19, 2016, addressing a U.S. District Court for the District of Idaho remand of the final critical habitat rule to correct a procedural error (81 FR 22961).

Including all public comment periods for the proposed rule, we received over 400 individual comments. Additionally, we received a form letter representing comments from almost 2,000 different individuals. During the June 25, 2014, public hearing in Sandpoint, Idaho, six individuals or organizations made comments, and during the June 26, 2014, public hearing in Bonners Ferry, Idaho, five individuals or organizations provided comments on the proposed rule. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from four knowledgeable individuals with scientific expertise that included familiarity with the southern mountain caribou DPS and its habitat, biological needs, and threats. We received responses from all four of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of the southern mountain caribou DPS. The reviewers provided comments and clarifications pertaining to the taxonomy of mountain caribou, status of the DPS, type and degree of threats affecting the status of the DPS, and our proposal to list the DPS as threatened. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) *Comment:* All peer reviewers disagreed with our proposal to list southern mountain caribou DPS as threatened; they all suggested it should be listed as endangered due to: (1) Declining population size; (2) small and isolated subpopulations resulting from habitat loss and fragmentation; and (3) other threats, including predation and recreation. All noted that COSEWIC has recommended that the southern mountain DU (which is analogous to the southern mountain caribou DPS) be listed as endangered under Canada's Species at Risk Act (SARA) (COSEWIC 2014).

Our Response: Subsequent to our proposed rule, in May 2014, COSEWIC published its "Assessment and Status Report on the Caribou (*Rangifer tarandus*) Northern Mountain population, Central Mountain population, and southern mountain population in Canada" (COSEWIC 2014). As noted previously, COSEWIC, which is composed of qualified wildlife experts drawn from the Federal, provincial, and territorial governments; wildlife management boards; aboriginal groups; universities; museums; national nongovernmental organizations; and others with expertise in the conservation of wildlife species in Canada, recommended that the southern mountain DU be listed as endangered under SARA (COSEWIC 2014, pp. iv, xix) pending review by the Federal Environment Minister. Upon further analysis of this new information, in conjunction with considering the comments received from the peer reviewers, as well as comments from the general public, Canadian government, states of Washington and Idaho, and the Kootenai Tribe of Idaho and Kalispel Tribe of Indians (hereafter collectively referred to as Tribes), we agree that the southern mountain caribou DPS should be listed as endangered under the Act. We have provided additional analysis supporting our endangered determination within Status of the Southern Mountain Caribou DPS, and the Factor C analysis in this final rule. See also the Determination, below.

(2) *Comment:* One peer reviewer suggested that the significance discussion in our DPS analysis could be bolstered by adding that the loss of the southern mountain caribou DPS (*i.e.*, continued northerly contraction of the range of woodland caribou) would represent a loss of approximately 13 percent of the range of southern mountain caribou as defined by SARA.

Our Response: The southern mountain caribou, as defined by SARA, is an outdated grouping of "Nationally Significant Populations" (NSPs) of

caribou that was based on Canada's "National Ecological Areas" (NEAs) established by COSEWIC in 1994 (COSEWIC 2002, pp. 7, 18–19) and should not be confused with the southern mountain caribou DPS addressed in this document. Canada's NSPs were delineated based on separate geographic populations of caribou occurring within different ecological areas, and did not necessarily consider differences in genetics or morphology between or behavioral adaptations exhibited by different caribou populations within the NEAs. Thus, to account for morphological, genetic, and/or behavioral differences between geographically discrete and evolutionarily significant populations of caribou, COSEWIC reorganized the population structure of caribou into "Designatable Units" (DU) (COSEWIC 2011, entire). The NSP of southern mountain caribou, as defined by SARA, was thus replaced by COSEWIC's DU 7 (Northern Mountain), DU 8 (Central Mountain), and DU 9 (southern mountain). Our DPS analysis of the southern mountain caribou DPS closely conforms to COSEWIC's DU 9 analysis contained in their 2011 DU report. Additionally, for the same reason as explained in our proposed rule (79 FR 26504, May 8, 2014, see p. 79 FR 26509), using the former NSP southern mountain caribou grouping, as defined by SARA, for comparing the significance in the loss of range should the southern mountain caribou DPS be extirpated is inappropriate because the southern mountain caribou, as defined by SARA, is not a species or subspecies. Rather, in accordance with our 1996 DPS policy, the appropriate comparison for significance is to assess the southern mountain caribou DPS (DU 9) relative to the woodland caribou subspecies.

(3) *Comment:* Three of the four peer reviews noted that Banfield's (1961) taxonomical classification for *Rangifer tarandus* is outdated and is the subject of much debate; thus, the classification of caribou as it pertains to the grouping of "woodland" caribou within *Rangifer tarandus* needs revision. Two of the reviewers suggested using the grouping of caribou, at least for North America, as outlined in COSEWIC (2014). One peer reviewer, noting the debate surrounding caribou taxonomy in North America, suggested that the proposed rule does not need to rest on the veracity of the subspecies classification scheme to work, and that our DPS analysis should be relative to the species *Rangifer tarandus* as opposed to *Rangifer tarandus caribou*.

Our Response: As noted in our May 8, 2014, proposed rule (79 FR 26504),

while caribou taxonomy continues to be subject to debate, Banfield's (1961) taxonomic grouping of woodland caribou is still currently widely accepted. Thus, until a scientifically accepted and peer reviewed revision to the taxonomic classification of the subspecies of caribou (*Rangifer tarandus*) is completed, Banfield (1961) represents the best available science on the taxonomic classification for the subspecies of caribou in North America. However, regardless of whether Banfield's (1961) taxonomic classification for the subspecies of caribou in North America is used or COSEWIC's grouping of caribou in North America is used as the barometer for assessing the discreteness and significance of the southern mountain caribou DPS relative to caribou in North America, the southern mountain caribou meets the discreteness and significance criteria for identifying it as a DPS under our DPS policy.

(4) *Comment:* Two peer reviewers suggested that the boundary of subpopulations (herds) within the southern mountain caribou DPS should be clarified. One peer reviewer identified that the proposed rule appears to refer to subpopulations (herds) outside of the southern mountain caribou DPS (*e.g.*, Banff and Jasper National Parks, and Ontario populations). Two peer reviewers commented that the proposed rule omitted referencing two recently extirpated subpopulations (George Mountain and Purcells Central), and recommended they be included in the list of identified subpopulations within the DPS boundary. One peer reviewer noted that there are discrepancies in the literature regarding the number of extant subpopulations in this DPS. Two peer reviewers commented that the proposed rule identified the status of the Hart Range herd as stable; however, according to COSEWIC (2014), the herd has declined to less than 500 individuals and is no longer considered stable.

Our Response: The proposed rule should have clearly identified the subpopulations, and we have included in this rule: (1) Figure 1, which contains the subpopulation names and current distribution of each subpopulation including the two extirpated subpopulations (George Mountain and Purcells Central); and (2) Table 1, which includes the status (increasing, declining) of each subpopulation and current population estimates. We refer to the subpopulations and the regions where they currently occur instead of delineating a boundary for the entire DPS.

We have removed the reference to the Banff and Jasper subpopulations (79 FR 26504, May 8, 2014, see p. 79 FR 26521). However, the Ontario reference was used in discussions pertaining to the historical distribution of woodland caribou, and as an example of a potential disease vector that could migrate west and affect woodland caribou in the southern mountain caribou DPS (see *C. Disease or Predation*). We have also corrected the reference to the status of the Hart Ranges subpopulation to reflect that the subpopulation is now declining with an estimated size of 398 individuals (COSEWIC 2014, p. xviii) (see Status of the Southern Mountain Caribou DPS).

Regarding the apparent discrepancies in the literature surrounding the number and names of extant subpopulations that are encompassed within the boundary of this DPS, further explanation would be helpful. Over time, Canada has grouped its caribou populations in accordance with various assessments (COSEWIC 2002, entire; COSEWIC 2011, entire), which has resulted in shifting boundaries, and moving one or more subpopulations between differing geographic groupings of populations. Additionally, not only have the boundaries of the subpopulations, and, thus, the number of subpopulations within them changed, but some subpopulations within the boundaries have been combined. For example, the Allan Creek subpopulation listed in Hatter (2006, *in litt.*) was grouped with the Wells Gray subpopulation in COSEWIC (2014), and the Kinbasket-South subpopulation listed in Hatter (2006, *in litt.*) was renamed to Central Rockies subpopulation in COSEWIC (2014) (Ray 2014, pers. comm.). However, the number (17) of subpopulations (which includes 15 extant, and 2 recently extirpated subpopulations) and their names encompassed within the southern mountain caribou DPS boundary conforms to Canada's southern mountain (DU9) as identified pursuant to COSEWIC (2011, entire); this is currently the best available information regarding population groupings.

(5) *Comment*: Three peer reviewers suggested that we incorporate population viability analyses from Hatter (2006, *in litt.*) and Wittmer *et al.* (2010) into the final decision. One peer reviewer indicated that the declining population trend and rate of extinction predicted by Hatter (2006, *in litt.*) and Wittmer *et al.* (2010) may be accelerated due to small population sizes.

Our Response: We have incorporated the findings of Hatter (2006, *in litt.*) and Wittmer *et al.* (2010) into our status

assessment. Wittmer *et al.* (2010, entire) used stochastic projection models on 10 subpopulations of the southern mountain DPS based on vital rates. All 10 subpopulations were predicted to decline to extinction within less than 200 years when models incorporated the declines in adult female survival known to occur with increasing proportions of young forest and declining population densities (Wittmer *et al.* 2010, p. 86).

Hatter (2006, entire, *in litt.*) conducted population viability analyses (PVAs) for all extant 15 subpopulations in this DPS based on population estimates from surveys. Time to quasi-extinction (a number below which extinction is very likely due to genetic or demographic risks, considered fewer than 20 animals in this case) was less than 50 years for 10 of 15 subpopulations (Hatter 2006, p. 7, *in litt.*). The probability of quasi-extinction in 20 years was 100 percent for 6 subpopulations, greater than 75 percent for 9 of the 15 subpopulations, greater than 50 percent for 11 of 15 subpopulations, and greater than 20 percent for 12 of 15 subpopulations. Hatter (2006, p. 7, *in litt.*) also predicted quasi-extinction of another subpopulation (Wells Gray) in 87 years.

Regarding the comment that the extinction rate of the southern mountain caribou DPS may be accelerating due to small subpopulation sizes, there appears to be some merit to this argument. The number of animals in the DPS has declined by at least 45 percent over the last 27 years (3 generations), 40 percent over the last 18 years (2 generations), and 27 percent since the last assessment by COSEWIC in 2002 (roughly 1.4 generations). Given this data, the rate of population decline appears to be accelerating, which is supported by Wittmer *et al.* (2005, p. 265) who studied rates and causes of southern mountain caribou population declines from 1984 to 2002, and found an accelerating population decline. Wittmer *et al.* (2005, p. 264) also found that predation was the primary cause of mortality driving the decline of mountain caribou. The decline of the overall population composed of small, fragmented, and isolated subpopulations is consistent with the Allee effect (Stephens *et al.* 1999, p. 186; McLellan *et al.* 2010, p. 286) which predicts population growth rates to decline as populations become smaller.

(6) *Comment*: One peer reviewer stated that human activity (including snowmobile use) in caribou habitat and predation are the most critical factors directly affecting caribou. The commenter suggested that human activity within areas occupied by caribou should be minimized, especially

during winter, and that snowmobiles should be restricted from these areas.

Our Response: Human activity in caribou habitat can affect caribou through a variety of mechanisms, including habitat loss and fragmentation, disturbance, and increased predation of caribou facilitated by habitat-mediated apparent competition (habitat changes that support increased numbers and distribution of other ungulate prey species (*i.e.*, deer, moose, and elk) that support higher densities of predators which then prey opportunistically on caribou) supported by altered forest composition and structure, etc. We will continue working with our partners (both within the United States and Canada) who manage landscapes within caribou habitat to identify and implement appropriate management strategies to reduce, if not eliminate, impacts that are detrimental to caribou conservation and recovery.

(7) *Comment*: One peer reviewer commented that there is currently no evidence that climate change is negatively affecting caribou genetic diversity and cited Yannic *et al.* (2013).

Our Response: Yannic *et al.* (2013, p. 3) noted higher genetic differentiation of caribou herds located at the extreme northern and southern latitudes of the species' range, and suggested that for southern herds (which would include the southern mountain caribou DPS) this may be due to the population's/subpopulation's occupancy of isolated mountain ranges and having smaller population sizes with high site fidelity. We also note that Serrouya *et al.* (2012, p. 2,597) demonstrated that below a population size of approximately 150 caribou, the magnitude and variation of genetic differentiation greatly increased between pairs of adjacent subpopulations (*i.e.*, genetic drift). Genetic drift can result from rapid changes in gene frequencies caused by environmental and demographic stochasticity independent of mutation and natural selection, and smaller populations are more susceptible to genetic drift. The gradual loss of rare alleles from a population changes the overall genotype of the population, ultimately resulting in a loss of genetic variability, which can negatively affect a population's ability to evolve in response to new selective pressure.

Finally, regarding climate change, the information currently available on the effects of global climate change and increasing temperatures does not make precise estimates of the location and magnitude of the effects possible at this time. However, climate change modeling has projected changes (*e.g.*,

decreases in spruce fir forests and alpine parkland) in mountain caribou habitats (Utzig 2005, p. 5; Utzig 2012, pp. 11–15), declines in snow occurrence (Columbia Basin Trust 2017, pp. 24–25), and increased prevalence of wildfires in western North America (Westerling et al. 2006, pp. 942–943). All these potential outcomes of climate change can serve to further isolate the southern mountain caribou DPS from other woodland caribou populations and further isolate caribou subpopulations within the southern mountain caribou DPS from one another. Further isolation of this DPS and subpopulations within it may exacerbate and accelerate the genetic differentiation noted by Yannic et al. (2013, p. 3) affecting caribou populations at the periphery of the species' current range.

(8) *Comment:* One peer reviewer commented that habitat alteration is a long-term and highly important issue, and suggested that wildfire suppression and silvicultural treatments (e.g., timber harvest and thinning) can either be beneficial or detrimental to maintenance of caribou habitat. For example, the commenter suggested that thinning may be used to facilitate and enhance the development of arboreal lichens.

Our Response: Habitat alteration within caribou habitat is a long-term issue as it can take greater than 150 years for forests to develop the microsite characteristics (e.g., structure and moisture) that support abundant arboreal lichen growth. We acknowledge that natural wildfire plays an important role in maintaining a mosaic of forest successional stages that provides habitat for a variety of species native to this ecosystem, and that fire suppression can alter vegetative mosaics and species composition. We also acknowledge that there are various silvicultural tools that can be employed to manage forest vegetation development and succession, which may include differing forms of thinning (either commercial or non-commercial). We will continue working with our partners who manage landscapes within caribou habitat to identify and implement a variety of tools and silvicultural treatment methodologies that facilitate the retention, development, and/or enhancement of vegetative characteristics that provide caribou habitat.

(9) *Comment:* One peer reviewer commented that the COSEWIC assessment process, which followed the methodology based on the International Union for the Conservation of Nature–Conservation Measures Partnership (IUCN–CMP) unified threats classification system, determined that

the overall calculated threat impact for this population was the maximum (Very High) indicating that continued serious declines are anticipated. The commenter suggested it would be desirable to include some details of that threat assessment in the final rule.

Our Response: We have included a summary of the COSEWIC threat assessment under Status of the Southern Mountain Caribou DPS.

(10) *Comment:* Two peer reviewers questioned the assessment of our “Significant Portion of the Range” (SPR) analysis pertaining to the isolation and fragmentation of the subpopulations, which led us to conclude that loss of some smaller isolated subpopulations would have no bearing on the status of remaining larger subpopulations. The reviewers noted that the isolation of the caribou subpopulations is a result of habitat loss and fragmentation, and has largely contributed and continues to contribute to the declining status of this population.

Our Response: We acknowledge the peer reviewers' concerns with the SPR analysis conducted in the May 8, 2014, proposed rule. Since then, we reevaluated the risk to the status of the DPS resulting from ongoing population fragmentation and potential loss of subpopulations within the DPS in this final rule under Status of the Southern Mountain Caribou DPS and the Factor C analysis. On July 1, 2014, we published a final policy interpreting the phrase “significant portion of its range” (SPR) (79 FR 37578). In our policy, we interpret the phrase “significant portion of its range” in the Act's definitions of “endangered species” and “threatened species” to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, the species, is an “endangered species.” The same analysis applies to “threatened species.” The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. As described in our SPR Policy, once the Service determines that a “species”—which can include a species, subspecies, or DPS—meets the definition of “endangered species” or “threatened species,” the species must be listed in its entirety and the Act's

protections are applied consistently to all individuals of the species wherever found (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act). Because in this final rule we found that this DPS is endangered throughout all of its range, an SPR analysis is not required and is not included in this final rule.

(11) *Comment:* One peer reviewer suggested that we should include a cross-walk to the Canadian Species at Risk Act designation of the Southern Group of the Southern Mountain Population of the Woodland Caribou (Environment Canada 2014, p. 4).

Our Response: Prior to the revision of the caribou population structure in Canada, pursuant to COSEWIC (2011, entire), which established the “Designatable Unit” structure, the population of caribou in Canada has been grouped into various population structures through time, some of which were based on Canada's “NEAs” (also, see response to *Comment* (2)). Currently, the population of caribou referred to in Environment Canada (2014, p. 4) as the Southern Group of the Southern Mountain Population is now recognized as the southern mountain caribou (DU 9), in accordance with COSEWIC (2011, entire), and the southern mountain caribou (DU 9) is the same as our southern mountain caribou DPS. Thus, while the different “groupings” are informative from a historical perspective, including a “cross-walk” of Canada's various caribou population structures/groupings to the southern mountain caribou DPS is not useful, and may confound the understanding of our DPS analysis and final decision.

(12) *Comment:* One peer reviewer commented that the analysis of threats section is lacking and should include discussion on disease, energy development (particularly pipeline infrastructure), and mining. The commenter also noted a lack of discussion on threats within the U.S. portion of the DPS.

Our Response: We have added additional discussion pertaining to disease, human developments including energy development (e.g., pipeline construction), and mining to the Summary of Factors Affecting the Species section of this rule. For additional energy and mining discussion, see “Human Development” under the Factor A discussion, above. For additional disease discussion, see Factor C, above. Relative to the U.S. portion of the DPS, the threats stemming from disease, predation, recreation, and forest management are similar to the

Canadian portion of the DPS. However, relative to human development and mining in the U.S. portion of the DPS, we are not aware of any such existing or proposed activities. We clarified this under the Factor A discussion, above.

(13) Comment: One peer reviewer suggested that augmenting the southern mountain caribou DPS with individual caribou obtained from other populations (*i.e.*, DU 8 and/or DU 9) may be necessary for recovery of the southern mountain caribou DPS. One peer reviewer suggested that conservation of this subpopulation will require coordinated predator management between Canada and the United States.

Our Response: Although recovery planning is beyond the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. Population augmentation, as well as other management techniques, including, but not limited to, maternal penning, predator management, and habitat protection may be utilized to achieve recovery of this DPS. The efficient and effective implementation of management strategies (including predator management) designed to facilitate recovery of this subpopulation will require coordination between the United States and Canada. In 2013, we began coordinating with British Columbia's Ministry of Forests, Lands, and Natural Resource Operations on wolf and caribou radio-collaring activities in an effort to better understand the habitat overlap and use between these species and the potential predation risk of wolves to caribou, and to implement effective and timely predator management strategies to reduce the predation risk to caribou.

(14) Comment: One peer reviewer noted an inaccuracy regarding our morphological description of the woodland caribou subspecies contained in our proposed rule (79 FR 26504, May 8, 2014, see p. 79 FR 26507) which stated, "Their winter pelage varies from nearly white in Arctic caribou such as the Peary caribou, to dark brown in woodland caribou (COSEWIC 2011, pp. 10–11)." The peer reviewer noted the actual text from COSEWIC (2011, pp. 10–11) is, "Breeding pelage is variable in colour and patterning (Geist 2007) and winter pelage varies from almost white to dark brown." The reviewer commented that the insertion of subspecies is misleading relative to the definitiveness of Banfield's (1961) woodland caribou description.

Our Response: We have corrected the inaccuracy under *Species Information* in this final rule.

(15) Comment: One peer reviewer stated that the designation of 30,010 acres (ac) (12,145 hectares (ha)) of critical habitat is insufficient relative to the size of the recovery area for the southern Selkirk Mountains population that was listed under the Act in 1983.

Our Response: As stated previously under *Previous Federal Actions* in the Background section of this final rule, on March 23, 2015, the Idaho District Court ruled that we made a procedural error in not providing public review and comment regarding considerations we made related to our November 28, 2012, final critical habitat designation (77 FR 71042). In response to the court order we reopened the public comment period on the November 28, 2012, final designation of critical habitat (77 FR 71042), which we proposed to reaffirm in the May 8, 2014, proposed rule (79 FR 26504) as the critical habitat for the southern mountain caribou DPS. On November 28, 2012 (77 FR 71042), we published a final rule designating approximately 30,010 ac (12,145 ha) of critical habitat for the southern Selkirk Mountains population of woodland caribou. In the final rule, the Service based our final designation of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou on the best available scientific information. In that final rule, we determined that the majority of habitat essential to the conservation of this subpopulation occurred in British Columbia, Canada, although the U.S. portion of the habitat used by the caribou makes an essential contribution to the conservation of the species. We designated as critical habitat approximately 30,010 ac (12,145 ha) within Boundary County, Idaho, and Pend Oreille County, Washington, that we considered to be the specific areas within the geographical area occupied by the species at the time it was listed in accordance with the provisions of section 4 of the Act, on which are found the physical or biological features essential to the conservation of the species, and which may require special management considerations or protection. The Act also allows us to designate as critical habitat specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. In this case, no unoccupied habitat was determined to be essential. Please see that final rule for a full discussion and analysis of the rationale and reasons for the area and

acreage of the final critical habitat designation. However, critical habitat designation does not signal that habitat outside the designated area is unimportant or may not contribute to the recovery of the species. The entire recovery area (*i.e.*, recovery zone) identified in the 1994 recovery plan comprises approximately 2,200 square miles (5,698 kilometers) in northern Idaho, northeastern Washington, and southern British Columbia (USFWS 1994a, p. 4). Approximately 53 percent of the recovery zone lies in the United States (USFWS 1994a, p. 4), and much of this area is administered by either the IPNF or CNF. Both the IPNF and CNF have LRMPs that incorporate management objectives and standards for caribou. Thus, pursuant to their respective LRMPs, both the IPNF and CNF have implemented extensive measures to protect caribou and caribou habitat on their ownership, both within the area designated as critical habitat as well as within the existing recovery zone. Further, section 7(a)(2) of the Act requires that Federal agencies insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat. Therefore, pursuant to section 7(a)(2), Federal agencies (primarily IPNF and CNF) have been consulting with the Service on the potential effects of proposed actions on the southern Selkirk Mountains subpopulation of woodland caribou since this subpopulation was emergency listed in 1983. Additionally, within all areas occupied by caribou, section 7 consultation on effects to caribou will continue to be required on all USFS lands, other Federally owned lands, and other non-Federally owned lands where actions create a project-related Federal nexus (*e.g.*, a Federal permit is required, Federal funds are used, etc.) regardless of whether or not the lands are designated as critical habitat. Within areas occupied by caribou that are not designated as critical habitat, Federal agencies and actions with a Federal nexus are not allowed to jeopardize caribou, and within areas designated as critical habitat Federal agencies and actions with a Federal nexus are not allowed to jeopardize the species nor adversely modify their designated critical habitat. Finally, section 7(a)(1) of the Act is an affirmative action mandate requiring Federal agencies to utilize their authorities to carry out programs for the conservation of endangered and threatened species. Thus, areas (*i.e.*, within the recovery

zone) that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. These protections and conservation tools will continue to contribute to recovery of this species.

Comments From States

(16) *Comment:* The State of Idaho questioned the Service's justification that the southern mountain population is discrete and significant, and asserted that our DPS determination is conclusory and unsupported by current available information.

Our Response: We appreciate the State of Idaho's comments. Since issuing the May 8, 2014, proposed rule (79 FR 26504), as described earlier in this rule, we have determined that, in accordance with our DPS policy, the best available scientific information supports our conclusion that the southern mountain caribou population is geographically, reproductively, and behaviorally discrete from other caribou populations.

Under our DPS policy, assessing the significance of a discrete population to the taxon may consider several lines of evidence or analysis. Under the DPS policy only one line of evidence is needed to demonstrate that the southern mountain caribou population is significant relative to the woodland caribou subspecies. We have identified two: (1) Persistence in a unique ecological setting, and (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon. In summary, the best available science supports our determination that this population exists in an ecological setting unique to the taxon, and its loss would represent a significant gap in the range of the taxon, and, therefore, it is a DPS pursuant to our DPS policy.

(17) *Comment:* The State of Idaho's Office of Species Conservation (OSC) commented that we have relied primarily on the fact that caribou in the southern mountain caribou DPS occupy "high elevation, mountainous habitats with deep snowfall" that forces them to rely on arboreal lichens as the single measure supporting our determination

that individual caribou in this population are physically and behaviorally separated from individual caribou in other populations. According to the State's comments, this population's unique adaptation to subsisting on arboreal lichens, whereas other caribou do not, is not a behavior that is "markedly separate" from other woodland caribou populations. The State used the polar bear as an example where we determined that polar bear populations are not markedly separate because their differences "do not outweigh the similarities that are most relevant to the polar bear's conservation status—in particular, the species' universal reliance on sea ice for critical life functions."

Our Response: As we described in our response to *Comment (16)*, several lines of evidence support our conclusion that caribou in the southern mountain caribou DPS are geographically (Wittmer *et al.* 2005b, pp. 408–409; COSEWIC 2011, p. 49; van Oort *et al.* 2011, pp. 222–223), behaviorally (Servheen and Lyon 1989, p. 235; Edmonds 1991, p. 91; Stevenson *et al.* 2001, p. 1; Cichowski *et al.* 2004, pp. 224, 230–231; MCST 2005, p. 2; COSEWIC 2011, p. 50), and reproductively (van Oort *et al.* 2011, pp. 221–222) isolated and discrete from other woodland caribou populations. Thus, we did not rely on a single measure to assess discreteness.

Additionally, unlike the polar bear example, where the species exhibits universal reliance on sea ice for its survival, caribou in the southern mountain caribou DPS occupy different habitats in a very different ecological setting from other woodland caribou populations, and have evolved a very unique foraging strategy to secure their life-history needs. Other neighboring caribou populations occupy less steep, drier terrain with less winter snow pack, and do not feed on arboreal lichens during the winter (Thomas *et al.* 1996, p. 339; COSEWIC 2011, pp. 50). Caribou in the southern mountain caribou DPS occur in high-elevation, mountainous habitats in the wet and very wet subzones of the Englemann Spruce–Subalpine Fir biogeoclimatic zone, the wet and very wet subzones of the Interior Cedar Hemlock zone, and the very wet subzones of the Sub-Boreal Spruce zone that typically receive between 2 to 5 meters (6 to 16 ft) of snow during the winter (van Oort *et al.* 2011, p. 216). Caribou in this population have adopted a foraging strategy that is unique among other woodland caribou populations wherein they rely almost entirely on arboreal lichens during the winter months. Thus, caribou in the

southern mountain population have evolved unique life-history strategies, enabling their persistence in an ecological setting unique among woodland caribou. This "unique behavior and ecological setting" is markedly different from other woodland caribou populations.

(18) *Comment:* The State of Idaho's OSC commented that the southern mountain caribou does not occupy an ecological setting unique to woodland caribou, and cite gray squirrels and the boreal population of woodland caribou in Canada to refute the Service's assessment. Relative to gray squirrels, the State commented that the Service determined that certain populations of gray squirrels' reliance on pine tree seeds was not unique because, across their range, gray squirrels consume a variety of tree seeds. The State commented that, because the boreal population of woodland caribou also utilizes arboreal lichens, the Service cannot use the southern mountain caribou's reliance on arboreal lichens as a rationale for supporting their occupancy of a unique ecological setting.

Our Response: As discussed in our response to *Comment (17)*, the uniqueness of the ecological setting occupied by southern mountain caribou hinges on the fact that they are the only woodland caribou population that occurs in high-elevation, mountainous habitats in the wet and very wet subzones of the Englemann Spruce–Subalpine Fir biogeoclimatic zone, the wet and very wet subzones of the Interior Cedar Hemlock zone, and the very wet subzones of the Sub-Boreal Spruce zone that typically receive between 2 to 5 meters of snow during the winter (van Oort 2010, p. 216). The occupancy of this type of ecological setting is unique among woodland caribou; other woodland caribou populations occupy less steep, drier terrain with less winter snow pack, and do not feed almost exclusively on arboreal lichens during the winter (Thomas *et al.* 1996, p. 339; COSEWIC 2011, pp. 50). Adaptation to this unique ecological setting has resulted in the southern mountain caribou's almost complete reliance on arboreal lichens during winter to support their nutritional requirements (as previously discussed), as well as their very unique migration behavior. Caribou within this population undertake as many as four altitudinal migrations per year (COSEWIC 2011, p. 50) between seasonal habitats, which is unique among caribou. While the boreal population of woodland caribou may consume arboreal lichens, they do not

rely on arboreal lichens (almost exclusively) as the only source of forage for 3 to 4 months of the year as southern mountain caribou do. In addition, boreal caribou occur in lower elevation habitats characterized by mature to old-growth coniferous forest composed of jack pine (*Pinus banksiana*) and black spruce (*Picea mariana*) with abundant lichens, or muskegs and peat lands intermixed with upland or hilly areas (Environment Canada 2012, p. 9).

(19) *Comment*: The State of Idaho's OSC commented that we analyzed inappropriately the significance of the loss of the southern mountain caribou relative to the British Columbia population of woodland caribou instead of the entire woodland caribou subspecies. The State also questioned the significance of a loss of 2.5 degrees in the range of the woodland caribou subspecies.

Our Response: Our "gap in the range" analysis discussed the decline of woodland caribou within British Columbia that has resulted from habitat loss and fragmentation, overhunting, and the effects of predation. We also discussed the fact that the woodland caribou population in British Columbia has declined by about 40 percent. However, our significance finding rested on analyzing what the loss of the southern mountain caribou population would represent to the entire woodland caribou subspecies. In this case, we determined that the southern mountain caribou population represents approximately 2.5 degrees in the range of the entire woodland caribou subspecies, and its loss would represent a significant gap in the range of the woodland caribou subspecies. Regarding the significance of 2.5 degrees latitude loss of woodland caribou range, the Service has not established a threshold of degrees latitude loss or percent range reduction for determining significance to a particular taxon. The importance of specific degrees latitude loss and/or percent range reduction, and the analysis of what such loss or reduction ultimately means to conservation of individual species/subspecies necessarily will be specific to the biology of the species/subspecies in question. However, as we explained in our proposed rule (79 FR 26504, May 8, 2014, see p. 79 FR 26512), peripheral populations can possess slight genetic or phenotypic divergences from core populations (Lesica and Allendorf 1995, p. 756; Fraser 2000, p. 50). The genotypic and phenotypic characteristics peripheral populations may provide to the core population of the species may be central to the species' survival in the face of

environmental change (Lesica and Allendorf 1995, p. 756; Bunnell *et al.* 2004, p. 2,242). Additionally, data tend to show that peripheral populations are persistent when species' range collapse occurs (Lomolino and Channell 1995, p. 342; Channell and Lomolino 2000, pp. 84–86; Channell 2004, p. 1). Of 96 species whose last remnant populations were found either in core or periphery of the historical range (rather than some in both core and periphery), 91 (95 percent) of the species were found to exist only in the periphery, and 5 (5 percent) existed solely in the center (Channell and Lomolino 2000, p. 85). Also, as described previously, caribou within the southern mountain caribou DPS occur at the southern edge of woodland caribou range (*i.e.*, they are a peripheral population), and have adapted to an environment unique to woodland caribou. Peripheral populations adapted to different environments may facilitate speciation (Mayr 1970 in Channell 2004, p. 9). Thus, the available scientific literature data support the importance of peripheral populations for conservation (Fraser 1999, entire; Lesica and Allendorf, 1995, entire).

(20) *Comment*: The State of Idaho's OSC commented that we did not support our finding in the proposed rule that the southern mountain caribou DPS is threatened.

Our Response: Upon receiving numerous comments along this line (*i.e.*, the DPS should or should not be listed, should or should not be listed as either threatened or endangered), we re-assessed our analysis pertaining to the status of the DPS. Consequently, based on our re-assessment, we determined that the DPS is endangered, and have provided additional analysis in this final rule supporting our determination under Status of the Southern Mountain Caribou DPS and *C: Disease or Predation*, above. Also see *Determination*, below.

(21) *Comment*: The Idaho Department of Lands (IDL) questioned the use of Evans (1960) as best available science in describing the historical composition of forests and the effects of fires, insect and disease outbreaks, and logging on caribou habitat in the United States, as much of Evans' information was obtained from a personal interview with the Forest Supervisor of the Kanisku National Forest. The IDL questioned Evans' (1960) assertion, based on the interview, that harvest (both salvage and non-salvage) of spruce trees was a significant component of timber volume obtained from forests during the early 1950s as a result of insects, disease, and blow-down. IDL calls into questions this

assertion by noting that the spruce component of the total net volume of merchantable trees obtained from IDL ownership comprised only 5.4 percent in 1968, and 7.3 percent in 1980. As such, IDL recommended removing Evans (1960) as a scientific source of information used in the analysis.

Our Response: We assume the Forest Supervisor of the Kanisku National Forest at that time was knowledgeable about the conditions on the forest under his supervision. Therefore, we have no reason to question the accuracy of his statements as reflected in Evans (1960). Additionally, the time frame IDL uses (*i.e.*, 1968 to 1980) to refute the spruce timber harvest volume is much later than the 1950s time span upon which Evans (1960, pp. 123–124) bases his assessment. Thus, we take Evans (1960) at face value and consider it to represent the best available science, providing an accurate record of historical timber harvest composition on the forest in the 1950s.

(22) *Comment*: The IDL stated that the Service portrayed timber harvest management of caribou habitat on IDL lands incorrectly. The IDL maintains that caribou are considered in timber management planning on IDL-owned lands in the Priest Lake area through adjustments borne out of discussions with the IDFG.

Our Response: Currently, the Service is not aware of any specific management standards the IDL has developed and implemented to maintain or enhance caribou habitat. However, the Service recognizes that IDL considers the potential effect to caribou during discussions with IDFG when planning timber harvest within caribou habitat. The Service also recognizes that the Act affords caribou protection through section 9 prohibitions. Section 9 of the Act prohibits taking a listed species. The definition of take includes harm, and harm is defined at 50 CFR 17.3 as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." Incidental take of a listed species cannot be exempted where such incidental take would lead to the jeopardy of the species or prevent its recovery and/or conservation. However, Section 10 of the Act allows for certain exceptions such as permits; one avenue is through development of habitat conservation plans (section 10(a)(1)(B)).

(23) *Comment*: The Washington Department of Fish and Wildlife (WDFW) stated its support of the

amendment to the listed entity and considers it an appropriate interpretation of the DPS policy that should be applied consistently. The WDFW would like the Service's continued support and partnership working with other State and Tribal partners to conserve and recover the species.

Our Response: We look forward to working with WDFW, IDFG, and Tribes in a coordinated effort to achieve recovery of this species.

(24) Comment: The State of Idaho's OSC supported the Service's commitment to transparency during the listing process. The OSC also commented that the Service should not rely on COSEWIC's assessment and recommendation to list the southern mountain caribou DU as endangered under SARA as supporting a listing determination of either endangered or threatened under the Act, primarily because the protections afforded species listed under SARA differ from those listed under the Act, but also because COSEWIC's recommended listing determination to SARA is advisory.

Our Response: The Act requires that the Service base its listing decisions on the best available scientific and commercial data. Therefore, we utilized the COSEWIC 2014 status assessment, as well as other scientific data and information, in our final listing decision. However, we are not relying on the ultimate decision that Canada may make with regard to COSEWIC's listing recommendation under SARA to support our final listing decision pursuant to the Act. We did, however, consider the significant and comprehensive analysis COSEWIC completed, specific to the southern mountain caribou, in their 2014 status assessment on the Northern Mountain, Central Mountain, and southern mountain caribou populations in Canada (COSEWIC 2014, entire) as substantively informing our analysis on the status of the southern mountain caribou DPS in accordance with the Act and other laws, policies, and regulations governing review of species considered for listing under the Act. Additionally, while it is important for the Service to understand COSEWIC's rationale for its listing recommendations to the Canadian government, the Service must base its listing decisions in accordance with our laws, regulations, and policy, the legal underpinnings of which may not be the same as Canada's Federal laws. Thus, based on differences in statutory language between the Canadian and U.S. laws, listing decisions may differ between Canada and the United States.

(25) Comment: The State of Idaho's OSC stated that it has been a committed partner in the conservation of caribou and will continue to support efforts to conserve this population, and is currently working with the Service and the Kootenai Tribe of Idaho to develop an updated recovery plan for caribou.

Our Response: We appreciate the State's significant interest and active involvement in the conservation of the caribou and its habitat, and look forward to continued work with the State of Idaho, as well as the State of Washington, Tribes, USFS, and Canadian partners in a coordinated effort to achieve recovery of this species.

(26) Comment: The State of Idaho's OSC stated that it supports the Service's final rule designating 30,010 ac (12,145 ha) of critical habitat in the United States. The State believes the final rule, which is a reduction from the proposed 375,562 ac (151,985 ha) of critical habitat, represents the best available scientific information, appropriately recognizes the area occupied by the species at the time of listing, and adequately analyzes the area providing the physical and biological features essential to "conserve" (emphasis in original) the Selkirk population of woodland caribou.

Our Response: The Service appreciates the State's support.

Comments From Native American Tribes

(27) Comment: In a letter to the Service on August 6, 2014, the Kalispel Tribe of Indians recommended that the Service list the southern mountain caribou DPS as endangered. The Tribe was specifically concerned about declines in the Selkirk Mountain herd over the past 4 years, citing a decline from 46 animals to 18 animals. The Tribe also mentioned that the Canadian portion of the DPS is currently in the process of being listed as endangered by the Canadian Ministry of Forests, Lands, and Natural Resource Operations.

Our Response: We appreciate the Kalispel Tribe of Indians concern over the decline of the southern Selkirk Mountains subpopulation. With regard to the Tribe's comment that the southern mountain caribou DPS should be listed as endangered, pursuant to our analysis of new information pertaining to the status of subpopulations within this DPS, we find that the southern mountain caribou DPS should be listed as endangered under the Act. We have provided our analysis for the endangered classification of this DPS in this final listing determination, which is based upon the best available scientific information, as well as comments from

peer reviewers, Tribes, British Columbia, Canada, the states of Washington and Idaho, and the general public. We also acknowledge that we are aware that COSEWIC has recommended to the Canadian Federal Environment Minister that the legal status of southern mountain caribou DU (which is equivalent to our DPS) be changed from threatened to endangered under SARA.

(28) Comment: The Kalispel Tribe of Indians recommended that a transboundary recovery strategy be developed to neutralize the threats responsible for the decline.

Our Response: Although recovery planning is beyond the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. To that end, the Service has recently renewed recovery planning efforts that includes coordination with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) as well as our Canadian partners (e.g., British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others), with the ultimate goal of developing an updated recovery plan for this transboundary DPS.

(29) Comment: In a letter to the Service on August 6, 2014, the Kootenai Tribe of Idaho commended the Service's analysis and proficiency in collecting the best available scientific and commercial information to support the proposed rule. The Tribe commented that it is proud of the close working relationship the Tribe has with the Service in working cooperatively to address impacts to Kootenai Territory and the Kootenai Tribe. The Tribe also acknowledged that the Service has worked government-to-government with the Tribe on issues affecting caribou. The Tribe requested the continuation of government-to-government relations to further address caribou conservation. The Tribe agreed with the Service's determination that the southern mountain caribou population meets the DPS criteria and that the southern Selkirk Mountain subpopulation alone does not meet the DPS criteria.

Our Response: The Service values its government-to-government relationship with the Kootenai Tribe of Idaho, and greatly appreciated the formal discussion on May 22, 2014, regarding the Service's proposed rule, as well as conservation of caribou in general. 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. This government-to-government relationship, as outlined in Secretarial Order 3206, dated June 5, 1997, establishes several important principles, including: (1) Working directly with Tribes to promote healthy ecosystems; (2) recognizing that Indian lands are not subject to the same control as Federal public lands; (3) assisting Tribes in developing and expanding tribal programs to promote healthy ecosystems; (4) supporting Tribal measures that preclude the need for conservation restrictions; (5) being sensitive to Indian culture, religion, and spirituality; (6) exchanging information regarding Tribal trust resources; and (7) striving to protect sensitive Tribal information from disclosure. Therefore, pursuant to Executive Order 13175, and more importantly, in consideration of continuing our close working relationship with the Tribe, we look forward to continued government-to-government, as well as biological and technical staff, discussions with the Tribe on caribou recovery and other matters important to the Tribe.

(30) *Comment:* The Kootenai Tribe of Idaho stated that it believes the status of the southern mountain caribou DPS should be endangered and not threatened. The Tribe stated that, based on a review of the population trend data (2002 to 2014) and several population modeling publications (Wittmer *et al.* 2005b; Hatter 2006, *in litt.*; Environment Canada 2014), it believes the southern mountain caribou DPS is in danger of becoming extinct over all or a significant portion of its range. The Tribe also referred to Canada's proposal to reclassify the southern mountain population of woodland caribou from threatened to endangered (COSEWIC 2014). Therefore, the Kootenai Tribe disagrees with amending the listing status from endangered to threatened and recommends that the Service maintain the current status as endangered.

Our Response: With regard to the Tribe's comment that the southern mountain caribou DPS should be listed as endangered, please see our response to *Comment (27)*.

(31) *Comment:* The Kootenai Tribe of Idaho stated that it believes the proposed rule inaccurately states that the range of the southern mountain caribou DPS has declined by 40 percent from the historical range. The Tribe

commented that this estimate only applies to the British Columbia portion of the historical range and does not include the U.S. portion. When estimated internationally, the range reduction of the southern mountain caribou DPS is approximately 60 percent (Spalding 2000).

Our Response: We correctly attributed the 40 percent reduction to the range of woodland caribou within British Columbia, Canada, in the proposed rule. However, to better characterize the decline in the range of this transboundary southern mountain caribou DPS, we agree the 60 percent range contraction provided in Spalding (2000, p. 40) provides a better measure of assessing the reduction in range of the southern mountain caribou DPS. We have included this reference and discussion within this final rule.

(32) *Comment:* The Kootenai Tribe of Idaho also commented that the proposed rule did not include two recently extirpated subpopulations (COSEWIC 2011; Environment Canada 2014) and recommended these subpopulations be incorporated into the final DPS description. The Kootenai Tribe of Idaho requested that the Service further define the DPS to include all extant and recently extirpated subpopulations to assure consistency with the listed entity under Canada's Species at Risk Act (southern group, southern mountain caribou) and the Committee on the Status of Endangered Wildlife in Canada designatable units (DU9) (COSEWIC 2011, Environment Canada 2014).

Our Response: The May 8, 2014, proposed rule stated that the George Mountain local population was recently considered to be extirpated (see 79 FR 26515). However, the proposed rule could have been more descriptive regarding the total number of subpopulations (including extant and recently extirpated) identified within the southern mountain caribou DPS. We have incorporated information regarding the two recently extirpated subpopulations (George Mountain and Purcell Central herds) into this final rule. See our response to *Comment (4)* for more information.

(33) *Comment:* The Kootenai Tribe of Idaho also recommended further discussion of Canada's augmentation efforts and the measures Canada has put into place (MCRIPB 2013). The Tribe believes that this information should be included in the final rule, as it will bolster the Service's analysis related to past and ongoing conservation measures for the DPS.

Our Response: We have added information on Canada's efforts to

manage and conserve caribou; specifically, we have added additional discussion pertaining to Canada's recent publication of their "Recovery Strategy for the Woodland Caribou, southern mountain population (*Rangifer tarandus caribou*) in Canada" (Canadian Mountain Caribou Recovery Plan) (Environment Canada 2014).

(34) *Comment:* The Kootenai Tribe of Idaho stated that, although the proposed rule adequately details many of the threats to the species, the threats should be assessed together in an ecosystem approach.

Our Response: As required by section 4(a)(1) of the Act, we assessed the threats affecting the status of a species under five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Immediately following our analysis of these factors, we provide a summary of the cumulative effects of the threats from Factors A through E that we believe provides the Tribe's suggested synthesis of the threats affecting this ecosystem. For example, we discuss how habitat alteration (Factor A) has affected the predator/prey balance (Factor C) within the ecosystem and how those threats have collectively affected the status of caribou within the DPS. Additionally, we described how human development (*e.g.*, roads) within caribou habitat has affected the predator/prey balance and forest ecology, and how climate change (Factor A) and human development (Factor A) acting in concert have altered caribou habitat within this DPS. Finally, we state that the suite of all these related threats, combined with each other, have posed and continue to pose a significant threat to caribou within the southern mountain caribou DPS.

(35) *Comment:* The Kootenai Tribe of Idaho stated that certain regulatory mechanisms on national forest system lands could be enhanced and/or modified on these lands. The Tribe recommended that the Service reassess the Factor D (the inadequacy of existing regulatory mechanisms) analysis in the proposed rule, and separate out and provide guidance on what regulatory mechanisms are possible, in comparison to current and past accomplishments.

Our Response: Section 7(a)(2) of the Act requires Federal agencies (including USFS) to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize

the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat. Additionally, pursuant to section 7(a)(1) of the Act, Federal agencies have an affirmative mandate to utilize their authorities in the assistance in the conservation of endangered and threatened species, as appropriate. It is not within the Service's purview to alter (*i.e.*, enhance or modify) existing regulatory mechanisms. Both the Idaho Panhandle National Forests (IPNF) and Colville National Forest (CNF) (the primary U.S. Federal landowners within the Selkirk Ecosystem) have amended their Land and Resource Management Plans (LRMPs) to address management of caribou. The CNF's LRMP was amended in 1988 (the CNF is currently in the process of revising their existing plan), and the IPNF developed and implemented a new LRMP in 2015. However, should future new scientific information indicate the need to change forest management for caribou, both the CNF and IPNF could amend their respective LRMPs to incorporate such new science. Future LRMP amendments affecting caribou would be coordinated with the Service pursuant to the Act's section 7(a)(2) requirements.

(36) *Comment*: The Kootenai Tribe of Idaho stated that the potential for vehicle collisions, especially on Highway 3 in British Columbia, should be added to the Factor E (other natural or manmade factors affecting its continued existence) analysis in the proposed rule. The Tribe stated that, based on the current locations of collared caribou in the South Selkirks, nearly 30 crossings of Highway 3 have been documented from March to August 2014, and the Tribe indicated that this may pose a significant risk to many small herds throughout the DPS.

Our Response: We discuss the potential for and impact of caribou mortality related to vehicle collisions on highways, specifically on Highway 3 in British Columbia, within the "Human Development" discussion under our Factor A threat analysis in the proposed rule and this final rule.

(37) *Comment*: The Kootenai Tribe of Idaho stated that the Service adequately analyzed and correctly concluded in the proposed rule that the threats and regulations discussed in relation to "biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this DPS" do not pose a threat to the continued existence of the southern mountain caribou DPS. The Tribe did not recommend any associated changes to the proposed rule.

Our Response: We appreciate the Tribe's comments.

(38) *Comment*: Regarding current or planned activities in the areas occupied by the DPS and their potential effects to the DPS, the Kootenai Tribe of Idaho stated it is working with the USFS and the Kootenai Valley Resource Initiative (KVRI) on several projects that are anticipated to aid in protection of caribou habitat. For example, the Trout/Ball Project plans to increase the resiliency of the forest in the lower elevations and provide fuel breaks below caribou habitat. These actions, while aimed at improving forest conditions outside caribou habitat, may benefit caribou by reducing the potential for fire to alter existing habitat.

Our Response: We appreciate the significant interest and active involvement of the Kootenai Tribe of Idaho in the conservation of the southern Selkirk Mountains subpopulation of woodland caribou and its habitat.

(39) *Comment*: The Kootenai Tribe of Idaho stated that the proposed rule adequately discussed and analyzed the potential effects of climate change on caribou habitat. However, the Tribe indicated that the effects of climate change extend beyond caribou habitat, and managing forests toward resiliency to fire and insect outbreaks could further protect caribou habitat in the face of climate change. The Tribe recommended that the Service enhance its analysis to include effects of climate change throughout the ecosystem.

Our Response: The effects of climate change will likely extend beyond caribou habitat, and most likely will affect all ecosystems and forests in North America and their associated flora and fauna to greater or lesser degrees depending on the rapidity and severity of the climate change. Increasing the resiliency of forests to fire and insect outbreaks would benefit caribou.

Toward that end, our final rule designating critical habitat for the southern Selkirk Mountains population of woodland caribou, recommended the development and implementation of comprehensive wildland fire use plans (plans that describe the treatment of all fires on USFS lands) (77 FR 71042, November 28, 2012, see p. 77 FR 71059). Regarding ecosystem-specific climate change analysis, current climate change modeling does not allow more precise discussion or projections of the future of climate change at local scales (*i.e.*, specific ecosystems) beyond that provided in the proposed and this final rule. Given the uncertainty in the current state of climate modeling, it is impossible to project specific fine-scale changes to the ecosystems to which caribou have adapted (Utzig 2005, p.

10). However, we expect to continue working with our Federal, State, and Tribal partners to incorporate changes to caribou habitat management as needed to address ecosystem specific responses resulting from climate change as they become more regionally certain and/or as the state of climate modeling facilitates increased precision and reliability of predictions.

(40) *Comment*: The Kootenai Tribe of Idaho recommended that the Service consider additional literature sources in its analysis, including Canada's Recovery Strategy for the Woodland Caribou, southern mountain population in Canada (Environment Canada 2014) and additional references pertaining to unsustainable predation rates (McLellan *et al.* 2012) and augmentation information, where it appears that resident animals are beneficial to successful augmentations by "teaching" new animals (*i.e.*, northern caribou) how to use the available niche and/or provide a stabilizing effect to transplanted animals (Warren *et al.* 1996, p. 552).

Our Response: McLellan *et al.* (2012, entire) investigated whether interactions with forage (bottom-up) or predators (top-down) were the principal mechanisms regulating southern mountain caribou populations. Their conclusion supports the conclusions of other cited scientific publications that determined apparent competition (*i.e.*, predation) is the proximate mechanism driving the population decline of mountain caribou (McLellan *et al.* 2012, p. 859). They also concluded that food limitation (neither quality nor quantity) is likely not driving the continued population decline of mountain caribou (McLellan *et al.* 2012, p. 859). We have incorporated this citation into our literature review. The conclusions of Warren *et al.* (1996, p. 552) will be informative during analysis of various management techniques that will be assessed during recovery planning and implementation for this DPS. As stated previously, recovery planning is beyond the scope of this process.

(41) *Comment*: The Kootenai Tribe of Idaho incorporated by reference its comments submitted on May 5, 2012, pursuant to the public comment periods on the November 30, 2011, proposed rule to designate critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou (76 FR 74018). The Tribe also indicated support for the final caribou critical habitat designation published in the **Federal Register** on November 28, 2012 (77 FR 71042).

Our Response: We acknowledge the Tribe's comments and stated support for

the designation and management of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou.

(42) *Comment:* The Kootenai Tribe of Idaho commented that caribou recovery is more important than critical habitat designation or a proposed rule to amend the listing, and ideally, habitat conservation, population viability, and recovery efforts would work together to provide a holistic approach to caribou recovery. The Kootenai Tribe indicated that it looks forward to working government-to-government with the Service and with all our co-sovereigns in the United States and Canada toward caribou recovery and protecting and enhancing the Kootenai Tribe's Treaty-reserved rights.

Our Response: Although recovery planning for the southern mountain caribou DPS is beyond the scope of this rule, section 4(f)(4) of the Act states that the Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan, and shall consider all information presented during the public comment period. Any successful recovery planning effort will require input and participation by appropriate Federal, State, Tribal, local, and private stakeholders to identify measures needed to conserve any species listed under the Act. The Service looks forward to working with the Tribe as well as other partners and stakeholders within the United States and Canada interested in recovery of this population.

Public Comments

Poaching

(43) *Comment:* One commenter questioned the Service's inclusion of poaching as a serious threat to the Selkirk Mountain caribou population, without citing poaching data in both the proposed rule and in the 1994 recovery plan (p. 24). The commenter stated that the use of anecdotal poaching information from 1980 to 1990 should not be included in the proposed rule if it cannot be confirmed by citable facts.

Our Response: In the May 8, 2014, proposed rule (79 FR 26504), we determined that there is no information indicating that, currently, illegal killing of caribou is a threat (see 79 FR 26523). The commenter may be referring to the following two instances we referenced poaching in the proposed rule. The proposed rule's first reference to poaching (see 79 FR 26505) was related to the Service's February 29, 1984, listing determination (49 FR 7390). In

that document, we determined the designation of critical habitat was not prudent at that time. That determination was based on the conclusion that increased poaching could result from the publication of maps showing areas used by the species. The 1984 listing rule identified that poaching regularly occurred and that a radio-collared caribou was shot in 1983 (49 FR 7390), and cited poaching of at least one animal from the southern Selkirk caribou herd in 1980, 1981, 1982, and 1983 (49 FR 7392). The proposed rule's other reference to poaching (see 79 FR 26517) is a reference to Evans (1960, p. 131) who, based on his studies of caribou in the northwestern United States, believed that, at that time, poaching may have been impacting the status of caribou in the area he studied. Additionally, according to the Service's 1994 recovery plan (p. 22), poaching was known to be a significant cause of caribou mortality in the Selkirk Mountains. For example, a mortality of a transplanted caribou in Washington in 1988 was being investigated, one case in Idaho in 1990 was successfully prosecuted, and two more caribou mortalities in Idaho in 1992 were being investigated. Furthermore, in 1984, British Columbia closed all big game hunting within a portion of caribou range in southern British Columbia in an effort to reduce illegal shooting of caribou (Service 1994a, p. 23). Finally, Johnson (1985, entire), who analyzed caribou mortality in the Selkirk and Purcell Mountains in British Columbia, Canada, from 1967 through 1983, determined that illegal hunting accounted for 75 percent of caribou mortality within these populations over this time frame.

In accordance with section 4(b)(1) of the Act, the Service is required to use the "best available scientific and commercial data" in its listing determinations. Our Policy on Information Standards under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines (<http://www.fws.gov/informationquality/>) provide criteria and guidance, and establish procedures to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the

basis for recommendations to list species.

Primary or original information sources are those that are closest to the subject being studied, as opposed to those that cite, comment on, or build upon primary sources. The Act and our regulations do not require us to use only peer-reviewed literature, but instead they require us to use the "best scientific and commercial data available" in a listing determination. We use information from many different sources, including articles in peer-reviewed journals, scientific status surveys, and studies completed by qualified individuals; Master's thesis research that has been reviewed but not published in a journal; other unpublished governmental and nongovernmental reports; reports prepared by industry; personal communication about management or other relevant topics; conservation plans developed by States and counties; biological assessments; other unpublished materials; experts' opinions or personal knowledge; and other sources.

Threats

(44) *Comment:* One commenter asserted that the Service did not fully assess new threats, such as new human development, particularly increased infrastructure for energy extraction, pipelines, power lines, and mines, to the DPS in its analysis.

Our Response: We have added additional discussion on these threats to the Summary of Factors Affecting the Species section of this final rule (see "Human Development" under the Factor A analysis).

(45) *Comment:* We received a few comments pertaining to silvicultural management within caribou habitat. One commenter suggested that logging operations should be restricted in caribou habitat. One commenter suggested that logging of old growth forest has nothing to do with decreases in the caribou population. Another commenter stated that proper harvesting and management of the forest in the area of the proposed caribou habitat would go far toward creating a habitat that is conducive to the return of caribou to the area, and that the Idaho Department of Lands has amply demonstrated that they have incorporated excellent management procedures that would facilitate such a return.

Our Response: Loss and fragmentation of caribou habitat (including old-growth forests) in an ecosystem that has been significantly altered from historical forest conditions due to a combination of timber harvest, wildfires, and road

construction continues to be a primary long-term threat to caribou. Historical implementation of timber management practices (e.g., large clear cuts) was not compatible with maintaining caribou habitat. To the extent that these same types of timber harvests would be implemented today, such treatments would similarly be incompatible with the habitat requirements of caribou. Certain timber harvest treatments may result in benign or even beneficial effects to caribou habitat, and that, in some situations timber harvest may be used to achieve or promote quicker attainment of tree species composition or certain structural characteristics (e.g., old-growth).

Within the United States, a majority of the habitat occupied by the southern Selkirk Mountain woodland caribou subpopulation of southern mountain caribou DPS is administered by national forests, specifically the IPNF and CNF. Federal agencies, pursuant to section 7 of the Act, are required to coordinate with the Service on any actions the agencies undertake, fund, or permit that have the potential to affect listed species (in this case, the caribou). Therefore, pursuant to section 7 consultation under the Act, the Service will coordinate with the Federal agencies (e.g., CNF and IPNF) during the course of developing timber harvest activities within caribou habitat to appropriately minimize the effects of such activities upon caribou conservation and recovery. Additionally, we acknowledge that both the IPNF and CNF have implemented extensive measures to protect caribou and caribou habitat on their land ownerships, within the existing Selkirk Mountain Caribou Recovery Zone.

We also understand that all other woodland caribou subpopulations (including the transboundary southern Selkirk Mountain subpopulation) and their habitat occur in British Columbia, Canada. Canada has implemented several measures to manage and protect caribou habitat from further fragmentation and loss, including, but not limited to: (1) In 2007, Canada endorsed the Caribou Recovery Implementation Plan (MCRIP) that protects 5,436,320 ac (2,200,000 ha) from logging and road building; and (2) all national parks (NPs) in Canada are strictly protected from commercial resource extraction, which includes Glacier NP and Mount Revelstoke NP that together comprise approximately 333,345 ac (134,900 ha). For more information, under the Factor A analysis, above, see *Efforts in the United States* under “Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its

Range.” Additionally, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. To that end, the Service will actively coordinate and participate with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) and Canada (e.g., British Columbia’s Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others) on the development of management objectives to maintain and enhance woodland caribou habitat.

Based on an analysis conducted by Wittmer *et al.* (2010, p. 91), increasing proportions of early seral forest (e.g., fragmentation) within caribou habitat results in increasing rates of extinction of caribou populations. Increased proportion of young forest supports higher densities and distribution of other ungulate species that in turn supports higher predator numbers that prey opportunistically on caribou. Additionally, higher predator numbers can further accelerate the rate of population decline through depensatory⁸ mortality effects (Wittmer *et al.* 2010, p. 91). It will likely require greater than 150 years (greater than 16 generations of caribou) of habitat protections for early successional and fragmented forests to develop the old-growth habitat characteristics (vegetative structure and composition) (Stevenson *et al.* 2001, p. 1) that would begin to restore the natural predator to prey balance of high-elevation, old-growth forests, and thus reduce predation pressure on caribou.

(46) *Comment:* One commenter stated that the Service must consider documented snowmobiling violations within the area of Selkirk Mountain Caribou Recovery Zone closed to snowmobiling by court order until the IPNF develops and implements a winter travel plan when determining what habitat protections are necessary for recovery of the southern Selkirk Mountains caribou subpopulation. The commenter suggested that these violations may have affected the functionality of the area to benefit caribou, potentially impairing caribou distribution within the ecosystem as well as increasing their susceptibility to predation.

Our Response: We acknowledge that snowmobiling violations of the area closed by court ordered injunction on the IPNF have occurred. Human activity in caribou habitat can affect caribou through a variety of mechanisms,

⁸ In population dynamics, depensation is the effect on a population whereby, due to certain causes, a decrease in the breeding population (mature individuals) leads to reduced production and survival of eggs or offspring.

including habitat loss and fragmentation, disturbance, and increased predation. Additionally, we appreciate that effective enforcement of caribou habitat protection measures can be challenging. We will continue working with our partners (both within the United States and Canada) who manage landscapes within caribou habitat to identify and implement appropriate management strategies to reduce, if not eliminate, impacts detrimental to caribou conservation and recovery.

(47) *Comment:* One commenter referenced language in the final critical habitat rule (77 FR 71042; November 28, 2012) recommending the development of a wildland fire use plan by the IPNF to deal with management of fire (both natural and human-caused) within the ecosystem. The commenter suggested that all fires within caribou habitat should be suppressed because of the fire’s potential to create habitat for other predators or competitors of caribou. For example, the commenter referenced research conducted by Robinson *et al.* (2012) that showed wolves select for burns and areas adjacent to burns whereas caribou avoid burns, and that fires increased the probability of wolf-caribou overlap.

Our Response: The Selkirk Ecosystem, in addition to providing habitat for caribou, also supports habitat for other species native to the ecosystem, including Canada lynx, grizzly bear, other forest carnivores, and avian species including the black-backed woodpecker (*Picoides arcticus*). The Canada lynx and black-backed woodpecker, for example, rely on fires to facilitate the development and or maintenance of habitat they utilize to provide some of their life-history needs. Thus, natural wildfire plays an important role in maintaining a mosaic of forest successional stages that provides habitat for a variety of species native to this ecosystem. However, we also appreciate the research findings of Robinson *et al.* (2012, entire) relative to the effects of fire upon caribou habitat and wolf/caribou habitat overlap and interactions. Thus, in the November 28, 2012, final rule designating critical habitat (77 FR 71042), we recommended the development of a wildland fire use plan that will facilitate assessment of the appropriate use of fire or fire suppression within the Selkirk Ecosystem to maintain the variety of habitats and structural stages supporting the species native to this ecosystem.

Predator Control

(48) *Comment:* Several commenters suggested southern mountain caribou

select their winter habitat as a response to avoid predation rather than for food or winter habitat preference. Because predation by wolves and mountain lions is listed as “one of the most significant contributors to Southern Mountain Caribou DPS declines in recent decades” (79 FR 26504, May 8, 2014, see p. 79 FR 26523), several commenters questioned why the Service, and the States of Idaho and Washington do not try to actively protect caribou from predators. One commenter suggested that reducing the wolf population would result in increased numbers of caribou. Another commenter stated that until the predator-to-prey ratio is brought into proper balance, no activity or effort by humans will change the outcome for the caribou. Additionally, one commenter suggested that the Service does not properly address the effects of the introduction of the “Canadian” gray wolf on all cervid populations, including caribou, and that the Service is misleading the public by stating, “This change in the predator-prey ecology within the Southern Mountain Caribou DPS is thought to be catalyzed, at least in part, by human-caused habitat alteration and fragmentation” (79 FR 26504, May 8, 2014, see p. 79 FR 26523). This commenter suggested that the recolonization of the Selkirks by wolves as a result of the 1995 wolf reintroduction in Idaho may be jeopardizing the remnant caribou populations in Idaho and Washington rather than a change in the predator-prey ecology stemming from habitat alteration and fragmentation.

Our Response: Mountain caribou’s use of high-elevation habitats during the winter is an adaptive strategy to avoid predation by predators that are otherwise typically excluded from accessing these areas during winter due to high snow depths. However, the ability of mountain caribou to exploit these high-elevation habitats during winter is dependent on their ability to utilize, almost exclusively, arboreal lichens to provide their nutritional and energetic needs during this time.

Regarding management of wolves, on May 5, 2011, in accordance with Public Law 112–10, the Service issued a final rule (76 FR 25590) reinstating the April 2, 2009, delisting rule (74 FR 15123) whereby wolves in eastern Washington and Idaho (as well as other States) were removed from the Federal List of Endangered and Threatened Wildlife. Accordingly, management of wolves in eastern Washington and Idaho are the responsibility of the respective States in which they reside. Wolves may be exerting disproportionate predation

pressure on caribou as a result of altered forest structure that may be facilitating higher prey densities and increased distribution and thus higher wolf densities and distribution than would naturally occur in the Selkirk Mountains. To address this issue, we will coordinate with our State wildlife partners (e.g., WDFW and IDFG), Tribes, and Canadian partners on the development of appropriate wolf (as well as other predators) monitoring and management plans. Additionally, British Columbia’s Ministry of Forests, Lands, and Natural Resource Operations, recognizing the impact of predation on the status of the subpopulations within the DPS, is undertaking aggressive measures to control predator populations (e.g., targeted wolf removal operations within the South Peace region in northern British Columbia and the South Selkirk Mountains).

Recovery of this DPS will require implementation of a comprehensive recovery strategy, including predator management. As stated above, we will coordinate with our State wildlife partners (e.g., WDFW and IDFG), Tribes, and Canadian partners on the development of appropriate predator monitoring and management plans.

Relative to predation by wolves on other cervids, the Service is certainly aware that this occurs. However, within the context of this listing decision, we are required to address the threats to this DPS of woodland caribou, and predation is identified as a threat to this DPS. Regarding the statement that the Service is misleading the public over whether habitat alteration/fragmentation or wolf reintroduction is the primary catalyst driving the predator-prey ecology within the Selkirk ecosystem, we acknowledge the commenter’s opinion. Wolves were reintroduced into central Idaho and Yellowstone National Park in 1994, as nonessential experimental populations in accordance with the Service’s final environmental impact statement (FEIS; USFWS 1994b, entire). The Service’s FEIS stated that, over a timeframe of 15 years prior to 1994, wolves had naturally recolonized northwest Montana as a result of natural dispersal from Canada (USFWS 1994b, p. vi). Thus, it is likely that recolonization of the Selkirk Mountains by wolves is a result of dispersal of wolves from farther north in Canada and/or northwest Montana. Gray wolves, upon arriving in the Selkirk Ecosystem, have also very likely benefited from the increased abundance and distribution of prey species (deer, moose, elk) whose population growth and expansion in the Selkirk Mountains

have likely benefited from the alteration and fragmentation of the older successional boreal forest through fires (both natural and manmade) and historical silvicultural practices to younger successional forests that these species require. Increased abundance and distribution of these other cervid species (i.e., deer, moose, elk) likely support higher numbers of wolves (and other predators endemic to this ecosystem) than would otherwise be naturally supported by the older successional boreal forests. Higher numbers of wolves translates to increased predation pressure on caribou due to the overlap of these other cervid species with caribou during summer, primarily, when wolves opportunistically encounter caribou in the course of searching for these other cervid prey species. Thus, we believe that alteration and fragmentation of the boreal forest landscape is the primary driver that is currently supporting higher populations of alternate prey species that support a higher number of wolves that in turn have disproportionate predation impacts on caribou, rather than wolf reintroduction being primarily responsible for the existing predator/prey imbalance of this ecosystem.

Wolf Sterilization

(49) Comment: One commenter stated that wolf sterilization and reducing moose populations are ineffective measures that do not solve caribou predation problems. The commenter stated that wolf control through trapping and hunting is the only cost effective solution because it reduces wolf populations and generates revenue for the both the State and Federal Government in the form of license and tag sales and ammunition and gun sale taxes.

Our Response: The management of wolves and moose is the responsibility of the States in which these species reside. We are coordinating with the States of Idaho and Montana, as well as British Columbia, Canada, to better understand: (1) The predation impacts of wolves upon caribou; (2) the role these other cervid populations play in supporting higher numbers and or increased distribution of wolves within the ecosystem; (3) the interactions between other cervid species, wolves, and caribou; and (4) the potential management implications of such interactions. Improved understanding of the relationship between wolves, caribou, other prey species, and their habitats will facilitate the development of comprehensive conservation frameworks addressing management of

all species (inclusive of both predator and prey) native to this ecosystem.

DPS/Genetic Discreteness/Uniqueness

(50) *Comment:* Several commenters agreed with our DPS analysis, while several others disagreed. Several commenters suggested that the Service's statement that the southern mountain caribou population is markedly separate from other populations of woodland caribou as a result of physical (geographic) factors is not well supported and there is no evidence of a physical barrier preventing movement. One commenter disagreed with our DPS analysis indicating that the southern Selkirk Mountain caribou subpopulation is part of the larger southern mountain caribou DPS. One commenter stated that there is no new information proving that the southern mountain caribou are discrete or significant, and implied we relied on a single characteristic in our significance conclusion. One commenter challenged the perception that significant numbers of caribou occurred in the United States prior to or since listing, even with the augmentation efforts. One commenter stated that evidence of historical gene flow between the local southern mountain subpopulations and other neighboring populations undermines our discreteness analysis, and is contrary to the Service's statement that the southern Selkirk Mountain subpopulation is isolated or incapable of migrating from their current habitats within the southern Selkirk Mountains.

Our Response: Regarding discreteness, under our 1996 DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. Thus, the policy does not require there to be a physical barrier preventing movement of individual animals between populations to satisfy the discreteness criteria. The best available science indicates the southern mountain caribou DPS is both geographically (Wittmer *et al.* 2005b, pp. 408–409; COSEWIC 2011, p. 49; van Oort *et al.* 2011, pp. 222–223) and behaviorally (Servheen and Lyon 1989, p. 235; Edmonds 1991, p. 91; Stevenson *et al.* 2001, p. 1; Cichowski *et al.* 2004,

pp. 224, 230–231; MCST 2005, p. 2; COSEWIC 2011, p. 50) discrete from other woodland caribou populations. While there is limited overlap between the annual ranges of some subpopulations at the far north of the southern mountain caribou DPS and other subpopulations of the Central Mountain (DU 8) caribou population, this overlap does not occur during the rut or mating season (COSEWIC 2011, p. 50). Furthermore, according to van Oort *et al.* (2011, pp. 221–222), it is highly likely that caribou subpopulations within the southern mountain caribou DPS (also known as southern mountain (DU 9)) are reproductively isolated from one another, let alone between neighboring caribou populations (*i.e.*, Central Mountain (DU 8), Northern Mountain (DU 7)). Thus, during the mating season, when genetic interchange would occur, individual caribou in the southern mountain caribou DPS are reproductively isolated through geographic separation from other woodland caribou occurring in the neighboring Central Mountain (DU 8) population. Additionally, caribou within the southern mountain caribou DPS occur in high-elevation, steep, mountainous terrain supporting deep snowfall (about 5 to 16 ft; 2 to 5 m) (COSEWIC 2011, p. 50) that has resulted in a foraging strategy unique among woodland caribou; caribou within this DPS subsist almost entirely upon arboreal lichens during winter months (Servheen and Lyon 1989, p. 235; Edmonds 1991, p. 91; Stevenson *et al.* 2001, p. 1; Cichowski *et al.* 2004, pp. 224, 230–231; MCST 2005, p. 2; COSEWIC 2011, p. 50). Finally, caribou within this DPS undertake altitudinal migrations as many as four times per year, which is also unique among woodland caribou (COSEWIC 2011, p. 50). Therefore, in accordance with our DPS policy, the best available scientific information supports our conclusion that the southern mountain caribou population is geographically, reproductively, and behaviorally discrete from other caribou populations.

Regarding the statement that we relied on a single characteristic to establish the significance of this DPS relative to the woodland caribou taxon, please see our responses to *Comments (16)* and *(17)*. Regarding significant numbers of caribou in the United States, we are unclear if the comment pertained to the significance analysis we conducted under our DPS policy. The commenter also did not define what would be considered a significant number of animals. However, a definition of significant number of animals is highly

variable and necessarily specific to the biology of the species in question. For example, a certain number of animals within a population might be considered significant for a given species that naturally has low density, distribution, and reproductive capacity, while for another species that naturally occurs at higher densities, larger distribution, and possesses higher reproductive capacity, that same number of animals might be considered insignificant. Furthermore, under our DPS policy, the number of individual animals in a population is not the basis, *per se*, of the significance analysis. Rather, the significance test under the DPS policy assesses the significance of a population (that theoretically could be comprised of many or few individuals) to the taxon (*i.e.*, species or subspecies) to which it belongs, and may include, but is not limited: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the discrete population segment differs markedly from other population segments in its genetic characteristics; (3) evidence that the population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon.

Relative to connectivity of the southern mountain caribou DPS to other neighboring mountain caribou populations (*i.e.*, Northern and Central), evidence of historical gene flow between these populations does not contradict evidence suggesting that these populations are now isolated from one another. While the conclusions of Serrouya *et al.* (2012, p. 2,594) indicate that historical gene flow (*i.e.*, movement of individuals between populations) did occur in the past between these populations, studies investigating recent caribou movement patterns indicate this is no longer the case. A radio-telemetry study conducted by van Oort *et al.* (2011, entire) on all subpopulations of caribou within this DPS from 1984 through 1987 did not detect any dispersal of juvenile caribou between subpopulations, and very little adult dispersal between subpopulations (van Oort *et al.* 2011, p. 221). Similarly, Wittmer *et al.* (2005b, entire) investigated caribou movement patterns within the same population from 1984 through 2004, and found limited interaction between the subpopulations (Wittmer *et al.* 2005b, p. 414). We presume a similar lack of dispersal (*i.e.*,

connectivity) is currently the case between the southern mountain caribou DPS and the other neighboring Northern Mountain and Central Mountain caribou populations. This presumption is supported by COSEWIC (2011, pp. 49–50), which concludes that the southern mountain caribou population is likely isolated from the Northern Mountain and Central Mountain caribou populations. We believe that the apparent lack of dispersal between neighboring caribou populations, as well as the observed lack of dispersal between subpopulations within the southern mountain caribou DPS, is an artifact of recent anthropogenic habitat fragmentation, which is supported by the conclusions of Serrouya *et al.* (2012, p. 2,597) and van Oort *et al.* (2011, p. 222).

Additionally, we are unclear as to the reference to the isolation of the southern Selkirk Mountain caribou subpopulation. The analysis under Discreteness in the May 8, 2014, proposed rule (79 FR 26504, see p. 26509) assessed the discreteness of the southern mountain caribou population relative to the neighboring Northern and Central Mountain Caribou populations. This analysis did not assess the relative connectivity of the southern Selkirk Mountains subpopulation to other subpopulations within the southern mountain caribou DPS. Nonetheless, as just described, the best available science indicates that the subpopulations within the southern mountain caribou DPS (including the southern Selkirk Mountains subpopulation) are now largely isolated from one another. The physical and reproductive isolation of these subpopulations may have significant implications for the conservation of the southern mountain caribou DPS as mountain caribou appear to lack the inherent behavior to disperse long distances (van Oort *et al.* 2011, pp. 215, 221–222). Dispersal of individuals (natal or breeding) can facilitate demographic rescue of neighboring populations that are in decline or recolonization of ranges from which populations have been extirpated (*i.e.*, classic metapopulation theory). However, species whose historical distribution was more widely and evenly distributed (such as mountain caribou) (van Oort *et al.* 2011, p. 221) that have been fragmented into subpopulations via habitat fragmentation and loss may appear to exist in a metapopulation structure when, in fact, because they may not have evolved the innate behavior to disperse among subpopulations, their fragmented distribution may actually

represent a geographic pattern trending toward extinction (van Oort *et al.* 2011, p. 215).

(51) *Comment:* We received three comments pertaining to the provision of our DPS policy allowing use of international borders to identify discrete vertebrate populations. One commenter suggested that differences in management of southern Selkirk Mountain caribou and their habitat between the United States and Canada is sufficient enough to warrant use of the international border provision of the DPS policy to delineate the southern Selkirk Mountains subpopulation as a DPS and retain its endangered status. Another commenter suggested a similar use of the international border provision for similar reasons, but suggested it should apply to the southern mountain caribou population and likewise be used to list it as endangered. Specifically, the commenter alleges that Canadian management of the southern mountain caribou population has failed to prevent or reverse the decline of the population. Another commenter suggested that, because caribou do not adhere to the 49th parallel (*i.e.*, essentially the border between the United States and Canada) the caribou population in the United States should not be considered a separate population.

Our Response: Our DPS policy allows the use of international borders to identify a discrete vertebrate population when it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. However, in this case, use of the international border to identify a DPS of the southern Selkirk Mountain woodland caribou subpopulation is inappropriate for the following reasons. First, there would need to be differences in the management of caribou between the United States and Canada that would differentially affect the conservation status of the population. In this case, there are not. For example, similar to habitat protections that have been implemented within the United States for caribou, British Columbia, Canada, has endorsed the Mountain Caribou Recovery Implementation Plan whose goal is to protect 2,200,000 ha (5,436,320 ac) of caribou habitat from logging and road building. There is no difference in the exploitation of mountain caribou within the southern mountain caribou DU/DPS between the United States and Canada; currently legal hunting of mountain caribou is not allowed within the southern mountain

caribou DU/DPS in British Columbia, Canada, or the United States. Further, hunting is prohibited in all national parks and ecological preserves in British Columbia. Thus, according to Seip and Cichowski (1996, p. 73), hunting has not been a major limiting factor to caribou within the southern mountain caribou DPS since the mid-1970s. Additionally, British Columbia's Ministry of Forests, Lands, and Natural Resource Operations, recognizing the impact of predation on the status of the subpopulations within the DPS, is undertaking aggressive measures to control predator populations (*e.g.*, targeted wolf removal operations within the South Peace region in northern British Columbia and the South Selkirk Mountains).

(52) *Comment:* Two commenters questioned the Service's evaluation of uniqueness based on the use of steep, mountainous habitats and/or feeding on arboreal lichens. One of the commenters stated that other North American species of cervids (*i.e.*, elk, mule deer, American bison) all contain subpopulations that historically and currently occupy a diverse range of habitats and food preferences yet are all genetically the same species. This commenter stated that the Service's uniqueness determination is not sufficiently supported by science. The other commenter suggested that mountain caribou's reliance on arboreal lichens is not unique because mountain caribou located south of the international border with Canada will utilize whatever feed is available to them, and, therefore, use of arboreal lichens in and of itself is not evidence that this DPS occurs in a unique ecological setting.

Our Response: The southern mountain caribou DPS is the only woodland caribou population that occurs in high-elevation, mountainous habitats in the wet and very wet subzones of the Englemann Spruce–Subalpine Fir biogeoclimatic zone, the wet and very wet subzones of the Interior Cedar Hemlock zone, and the very wet subzones of the Sub-Boreal Spruce zone that typically receive between 2 to 5 m (6 to 16 ft) of snow during the winter (van Oort 2011, p. 216). The occupancy of this type of ecological setting is unique among woodland caribou; other woodland caribou populations occupy less steep, drier terrain with less winter snow pack, and do not feed almost exclusively on arboreal lichens during the winter (Thomas *et al.* 1996, p. 339; COSEWIC 2011, p. 50). Adaptation to this unique ecological setting has resulted in the southern mountain caribou's almost

complete reliance on arboreal lichens during winter to support their nutritional requirements, as well as adopting a unique migration behavior. Caribou in this population undertake as many as four altitudinal migrations per year (COSEWIC 2011, p. 50) between seasonal habitats, which is unique among caribou. Additionally, while other populations of woodland caribou may consume arboreal lichens to some extent, they do not rely on arboreal lichens (almost exclusively) as the only source of forage for 3 to 4 months of the year as do southern mountain caribou.

(53) *Comment:* One commenter suggested that the DPS policy should not be used to simultaneously designate and list.

Our Response: The DPS policy is not used to make decisions as to whether or not to list under the Act. The DPS policy is used to identify discrete and significant populations of vertebrate species or subspecies. The decision to list species, subspecies, or DPSs of species or subspecies is made pursuant to section 4(a) of the Act. In order to list a DPS under the Act, it would first have to be defined in accordance with our DPS policy. Once defined (*i.e.*, designated), the DPS could then be considered for listing under the Act, provided it met the criteria for listing (*i.e.*, the status of the DPS is either endangered or threatened). The Act does not prohibit publishing DPS analyses and delineations simultaneously with listing analyses within the same proposed or final rulemaking documents.

(54) *Comment:* One commenter agreed with our determination that the southern Selkirk Mountains subpopulation (to which the commenter referred to as the South Selkirks caribou herd) is a DPS.

Our Response: Contrary to the comment, pursuant to our proposed rule, we determined that the southern Selkirk Mountain subpopulation of woodland caribou did not meet the criteria established under our 1996 DPS Policy for designating as a DPS (79 FR 26504, May 8, 2014, see pp. 79 FR 26504–26505 and 26508–26509). However, in the proposed rule, we also stated that delisting the species was not warranted, and that the southern Selkirk Mountains subpopulation is part of the larger southern mountain caribou population, which does meet our 1996 DPS policy criteria for designation as a DPS. Hence, we proposed to amend the listing from the southern Selkirk Mountains subpopulation to the southern mountain caribou DPS.

(55) *Comment:* One commenter stated a concern that lumping the southern

Selkirk Mountain caribou subpopulation into the larger southern mountain caribou DPS would result in the southern Selkirk Mountain caribou subpopulation potentially being dismissed as a biologically and ecologically minor or inconsequential part of the DPS.

Our Response: The best available scientific information was brought to bear in our status assessment, and in accordance with our DPS policy, that information indicates that the southern Selkirk Mountain caribou subpopulation is biologically and ecologically part of the larger southern mountain caribou DPS. Once a DPS is identified, designated, and listed, the Act requires the Service to strive to recover the DPS to the point at which the protections of the Act are no longer needed to ensure its long-term persistence. Although recovery planning is beyond the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act.

COSEWIC 2014/Proposed Rule Is Contrary to Best Available Science

(56) *Comment:* We received numerous comments regarding our proposal to list the southern mountain caribou DPS as threatened. Many commented that the DPS should be listed as endangered and not threatened. Others agreed with listing the DPS as threatened. A few stated the DPS should not be listed at all. Those who commented that the DPS should be listed as endangered cited reasons including: (1) The DPS includes the last surviving caribou subpopulation in the coterminous United States; (2) small population size; (3) continuing population decline; (4) increasing and escalating threats related to recreation (including snowmobiling and heli-skiing), timber harvest, disease, and climate change; (5) altered predator/prey dynamics related to habitat changes resulting from timber harvest; (6) isolation of this DPS from other woodland caribou populations in Canada; (7) changing the status from endangered to threatened is contrary to the considerable body of science generated over the past 3 decades; (8) the Service should be consistent with COSEWIC's 2014 status assessment; and (9) more scientific study, data collection, and tracking data are necessary before removing endangered status. Those who support listing the DPS as threatened commented that there are other woodland caribou populations in Canada and this DPS is part of the larger, more numerous woodland caribou subspecies. Those who support delisting caribou (*i.e.*, removing caribou

from the Federal List of Endangered and Threatened Wildlife, which would remove the protections of the Act) believe that Canada supports healthy populations of caribou with sufficient numbers of individuals such that the southern mountain caribou DPS should not be listed. One commenter noted that the Service partially supported the proposed listing of the DPS as threatened due to the statement that northern subpopulations in the Hart Range were considered stable, which is contrary to newer science indicating some of those subpopulations are now declining. One commenter stated that we should not rely on the study by Hatter *et al.* (2004) as a basis for listing as threatened because their analysis, which used population modeling to predict the probability of extinction of the southern mountain caribou DPS, is more than 10 years old.

Our Response: Upon further analysis of the best available scientific and commercial data pertaining to the status of this DPS, including review of the recently released 2014 report on the status of mountain caribou by COSEWIC (COSEWIC 2014, entire), and population viability analyses conducted by Hatter (2006, entire, *in litt.*) and Wittmer *et al.* (2010, entire), we have determined that the status of and threats to the southern mountain caribou DPS warrant listing it as endangered (see Determination, below). Additionally, we have updated the status of all subpopulations in accordance with the latest population assessment by COSEWIC (COSEWIC 2014), which includes that fact that some populations, once considered as stable, are now declining. Accordingly, this final rule lists the southern mountain caribou DPS as endangered.

Regarding the use of Hatter *et al.* (2004), there are more recent population viability analyses that should be included in our assessment. Therefore, in addition to Hatter *et al.* (2004), we have incorporated the findings of Hatter (2006, *in litt.*) and Wittmer *et al.* (2010) into our status assessment under Status of the Southern Mountain Caribou DPS in this final rule.

(57) *Comment:* One commenter stated that the original listing of caribou under the Act was flawed because it relied on a single Master's degree thesis that was not scientifically peer-reviewed, and that any listing of a species under the Act must be based on sound scientific data and justification.

Our Response: The Service is not relying on Evans 1960 (the Master's thesis to which the commenter refers) to inform our understanding of the current status of and threats to the southern mountain caribou DPS. Evans (1960) is

informative from a historical standpoint, and was, therefore, used to provide insight into the historical ecology and distribution of woodland caribou in the northwestern United States. The Act requires that we use the best available scientific and commercial data in making listing determinations, see our response to *Comment (43)* for an explanation of what information we may consider. In our May 8, 2014, proposed rule (79 FR 26504), we determined that the original listing of the southern Selkirk Mountain subpopulation of woodland caribou was incorrect, and we proposed to amend the original listing from the southern Selkirk Mountain subpopulation of woodland caribou to the southern mountain caribou DPS. The final listing of the southern mountain caribou DPS is based on an extensive review of all currently available and relevant scientific information, including peer-reviewed science, on the status of the DPS, which includes, but is not limited to: COSEWIC 2011, 2014; Hatter et al. 2004; Hatter 2006; Wittmer et al. 2005a, 2005b, 2007, 2010; McLellan et al. 2012; Seip 1992, 2008; and Kinley and Apps 2001.

(58) Comment: Two commenters stated that the recently released and published information from agency biologists in Canada, and subsequently the Canadian government, is of utmost importance to the caribou listing decision of the Service.

Our Response: The Act requires that the Service base its listing decisions on the best available scientific and commercial data. Therefore, we have utilized COSEWIC's 2014 status assessment, to which the commenter referred, in our final listing decision. However, while it is important for the Service to understand COSEWIC's rationale for its listing recommendations to the Canadian government, the Service must make its listing decisions in accordance with applicable United States laws, regulations, and Service policies. Consequently, listing decisions may differ between Canada and the United States.

Significant Portion of the Range

(59) Comment: One commenter questioned the validity of our "significant portion of the range" (SPR) analysis. Specifically, the commenter questioned our assessment pertaining to the isolation and fragmentation of the subpopulations within the southern mountain caribou DPS, which led us to conclude that loss of the smaller, isolated southern subpopulations (that each individually would meet the definition of endangered under the Act)

would have no bearing on the status of remaining larger northern subpopulations. Therefore, the loss of the smaller, isolated southern subpopulations would not lead to the extirpation of larger northern subpopulations such that the DPS would be in danger of extinction. Thus, the smaller, isolated southern subpopulations did not constitute a significant portion of the range of the southern mountain caribou DPS.

Our Response: We acknowledge the commenter's concerns with the SPR analysis conducted in the proposed rule. Please see our response to comment no. 10.

Threatened Status Would Weaken Protections

(60) Comment: Several commenters expressed concern that there is inadequate enforcement of habitat restrictions for caribou under the current endangered status and concern that a change in status to threatened would weaken protective restrictions under the rules governing threatened status. Several commenters stated that enforcement of the court injunctions against snowmobiling in critical habitat is lacking and is difficult, especially now that new snow machines are faster and can travel farther into remote areas. One commenter expressed concern that threatened status would make enforcement even less effective and would reduce protections for the Selkirk herd by opening up more of their range to snowmobiles and logging of old growth forests.

Our Response: The comments pertaining to a threatened designation are moot, as pursuant to peer review, public comments, and our additional analysis of all the science pertaining to this DPS, we determined that the status of and threats to this DPS warrant listing it as endangered. Additionally, we appreciate that effective enforcement of caribou habitat protection measures can be challenging for Federal and State land management agencies within the United States, and British Columbia provincial authorities in Canada. We have assessed the effects and governance of such activities under our Factor A and D analyses, respectively.

(61) Comment: Several commenters expressed concern over the effects that snowmobiling and other recreational activities can have on caribou and their habitat, including disturbance, and fragmentation of habitat leading to smaller habitat patches caribou have to support breeding activities, etc. One commenter suggested that the access provided to predators through the compaction of snow by snowmobiles

may have increased predation on caribou calves, potentially further decreasing an already low calf survival rate, and potentially contributing to a declining caribou population. On the other hand, one commenter stated that snowmobiles, other over-the-snow vehicles, or other recreational users do not pose a threat to caribou, and that such perceived threats are based on conjecture or speculation, and are contrary to experiences of snowmobilers and other forest users. Others expressed concern that listing the DPS would continue to restrict or result in increased restrictions on recreational access to areas occupied by caribou. One commenter stated that listing of this population under the Act has led to a court-ordered injunction of snowmobiling and snowmobile trail grooming in the IPNF, inhibiting winter recreation in the region and depriving many of the income and public lands access that are dependent on the enjoined activities.

Our Response: Winter is a particularly stressful time for caribou as their mobility is restricted by deep snow, and their nutritional intake is exceptionally limited due to their dependency on arboreal lichen to survive during this period. During winter, mountain caribou are primarily located in high-elevation subalpine forest and subalpine parkland habitat in areas of deep snow and gentle or moderate terrain (Apps et al. 2001, p. 70; Terry et al. 2000, p. 594). These areas are also attractive to snowmobilers. The best available science indicates that increasing levels of winter recreation activities (e.g., snowmobiling, heli-skiing, snow-cat skiing, etc.) within the caribou's winter range represent a significant threat to woodland caribou (USFWS 2008, p. 28). Current best available scientific information indicates that snowmobile activity can displace caribou from suitable habitat (Simpson 1987, pp. 8–10; Tyler 1991, pp. 183–188; Kinley 2003, p. 25; Seip et al. 2007, p. 1,543), cause caribou to experience elevated energetic costs (Reimers et al. 2003, pp. 751–753) and physiological stress (Freeman 2008, p. 44), and possibly force caribou into using lower quality habitat with increased risks of predation or mortality from avalanches (Seip et al. 2007, p. 1,543). Additionally, snowmobile trails may facilitate access of predators to caribou habitat, thereby increasing predation risk to caribou (Whittington et al. 2011, p. 1540). Furthermore, there is emerging concern regarding the potential effects that other types of recreational use within caribou habitat outside of the winter season may

have upon caribou. Dumont (1993, pp. 31–33), in a study of the impact of hikers on caribou in the Gaspésie Conservation Park, Quebec, Canada, concluded that hikers caused woodland caribou to move from preferred alpine areas into adjacent forested habitat. Displacement of caribou into forested areas may increase their susceptibility to predation by moving caribou into areas of reduced visibility (Dumont 1993, p. 11).

Regarding the management of recreational snowmobile access, management of these lands is not under the Service's purview. In the United States, management of lands occupied by the southern Selkirk Mountain woodland caribou subpopulation is within the purview of the Federal (*i.e.*, CNF, IPNF, Bureau of Land Management) and State (*i.e.*, Idaho Department of Lands) land managers and private landowners. The Service will coordinate with the Federal agencies managing the effects of recreational activities (including snowmobiling) upon caribou and their habitat through the development of land and resource management plans. Development of land and resource management plans are Federal actions subject to section 7 consultation under the Act for which Federal agencies must consult with the Service.

The Service acknowledges that some seasonal limitations on motorized (primarily pertaining to snowmobiles) vehicle access to public lands have occurred since listing of the southern Selkirk Mountains subpopulation of woodland caribou under the Act. These seasonal closures were put in place to minimize disturbance to caribou, and include a 1994 closure for a large area of the Selkirk Crest on the IPNF. The 1994 closure was put in place to protect caribou from impacts related to snowmobiling, in coordination with the IDFG. Additionally, we understand that a court-ordered injunction in 2006, which was modified in 2007, has restricted much of the area used by caribou within the Selkirk Crest from snowmobiling, until the IPNF develops a winter recreation strategy addressing the effects of snowmobiling upon the species. The Service will work closely with the IPNF on the development of their winter recreation strategy.

Additionally, except for the transboundary southern Selkirk Mountain subpopulation, all other subpopulations of this DPS occur in Canada. Canada recognizes the potential effect of snowmobile recreation on caribou and their habitat. For example, in 2009, the British Columbia's Ministry of Environment closed approximately

2,471,050 ac (1,000,000 ha) of caribou habitat within the Canadian portion of the southern mountain caribou DPS to snowmobile use (MCRIPPB 2010, p. 10). The Service is committed to achieving the conservation and recovery of the DPS, as is required by the Act. To that end, we will actively coordinate with our partners in the United States (*e.g.*, WDFW, IDFG, Tribes, and others) and Canada (*e.g.*, British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others) on the development of management objectives allowing for snowmobile use and other recreational activities to occur within the range of the DPS without resulting in excessive disturbance to caribou or fragmentation of their habitat to the extent that conservation of the DPS would be undermined.

Recovery

(62) Comment: Several commenters stated that the Service should work more closely with Canada on a recovery plan, and that the Service should contribute more resources to the recovery effort.

Our Response: We have recently (within the past year) initiated a process to revise the 1994 recovery plan. To date, this process has included participation and coordination with British Columbia, Canada, including British Columbia's Ministry of Forests, Lands, and Natural Resource Operations, and Ktunaxa Nation (First Nations Canada), as well as U.S. entities including USFS, WDFW, IDFG, Kootenai Tribe of Idaho, Kalispel Tribe of Indians, and local and environmental stakeholders.

Recovery/Role of Service

(63) Comment: Several commenters referred to recovery success stories of the Act (*i.e.*, the eastern red wolf, Pacific salmon now jumping fish ladders, the reintroduction of the California condor, revival of the whooping crane, and even the comeback of the bison, which was almost exterminated). One commenter stated that the Service would be derelict in its duty by not providing caribou with the same protection afforded to other animals, such as the wolf and the grizzly bear in Idaho. Several commenters expressed concern that the Service is not enforcing the Act properly and questioned the Service's commitment to protecting threatened and endangered species.

Our Response: We hope to achieve success with the conservation of the southern mountain caribou DPS. Listing this DPS as endangered under the Act requires that we strive to provide for the

southern mountain caribou's conservation to the point at which the protections of the Act are no longer required, and the DPS can then be delisted. As stated previously in the response to *Comment (62)*, the Service has initiated a process to update the 1994 recovery plan. Recovery plans are intended to identify and establish management and conservation needs of the species (in this specific case, the DPS) so that when they are achieved, the species (DPS) can be delisted as the protections of the Act will no longer be required to ensure its conservation.

Cultural Importance

(64) Comment: Several commenters stated woodland caribou should be conserved because they are an important part of the ecosystem and environmental heritage of northeastern Washington and northwestern Idaho, and because they are also culturally and spiritually important to Tribes.

Our Response: Although recovery planning is beyond the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. To that end, the Service will actively coordinate and participate in the development of a recovery plan with our partners within the United States (*e.g.*, WDFW, IDFG, Tribes, and others) as well as our Canadian partners (*e.g.*, British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others).

Request Access to More Information

(65) Comment: One commenter requested that the Service and State agency websites provide information (or provide links to the British Columbia's websites) about the status of mountain caribou and recovery efforts in British Columbia to provide a better overall picture of the caribou situation.

Our Response: The Service will consider adding links to Canada's COSEWIC web page on our web page for woodland caribou. However, until such a link is established, information on Canada's efforts to recover woodland caribou can be found at <http://www.cosewic.gc.ca>. State's web pages are managed by the appropriate State agency.

Taxonomy

(66) Comment: We received many comments pertaining to the taxonomy of caribou. Several agreed with the subspecies designation of woodland caribou, while several others stated that there is a need for a contemporary review and revision of caribou

taxonomy (Geist 2007; COSEWIC 2011, p. 10), and that the Banfield definition is outdated and should no longer be used. Other commenters suggested that the COSEWIC (2011, p. 49) definition is the best available definition at the present time, and one commenter implicitly questioned our DPS analysis by asserting there is no such thing as a “mountain caribou” and that there is no differentiation among caribou (*i.e.*, all caribou are alike).

Our Response: As noted in our May 8, 2014, proposed rule (79 FR 26504), while caribou taxonomy continues to be subject to debate, Banfield’s (1961) taxonomic grouping of woodland caribou is still currently widely accepted. Thus, until a scientifically accepted and peer-reviewed revision to the taxonomic classification of the subspecies of caribou (*Rangifer tarandus*) is completed, it is appropriate to rely on Banfield 1961. We believe that until such a review is completed, Banfield (1961) represents the currently best available science on the taxonomic classification for the subspecies of caribou in North America. Additionally, COSEWIC’s 2011 report that established 12 “Designatable Units” of caribou in Canada is not analogous to and should not be construed with a taxonomic analysis at the species or subspecies level. Canada’s criteria for establishing Designatable Units (DU) allows consideration of separate and discrete populations of species where the individually discrete population is evolutionarily significant to the overall taxon (species). Thus, under COSEWIC, a DU is not dissimilar to our DPS policy, except that, whereas our DPS analysis considers threats when establishing a DPS, COSEWIC, when establishing a DU, does not. However, regardless of whether Banfield’s (1961) taxonomic classification for the subspecies of caribou in North America is used or COSEWIC’s grouping of caribou in North America is used as the gauge for assessing the discreteness and significance of the southern mountain caribou DPS relative to caribou in North America, the southern mountain caribou meets the discreteness and significance criteria for identifying it as a DPS under our DPS policy. For a discussion on the relevance of the biological grouping of the southern mountain caribou as a DPS and its conformance to our DPS policy, please refer to the DPS analysis contained in this final rule.

(67) *Comment:* We received a few comments regarding listing DPSs under the Act. One commenter stated that the Service’s decision on the Bonner County and Idaho State Snowmobile Association (ISSA) petition to delist the

Selkirk caribou subpopulation (*Rangifer tarandus caribou*) from the List of Endangered and Threatened Wildlife (discussed below) is insufficient and inconsistent with the Act. Some commenters stated that the Act only allows listing DPSs of species, and not subspecies, while other commenters stated that the Act allows designating DPSs of both species and subspecies.

Our Response: On May 14, 2012, we received a petition from the Pacific Legal Foundation, representing Bonner County, Idaho, and ISSA requesting that the Service delist the Selkirk caribou subpopulation (*Rangifer tarandus caribou*) from the List of Endangered and Threatened Wildlife. On December 19, 2012, we published a 90-day finding (77 FR 75091) in response to that petition. Our finding stated that the petition presented substantial information indicating that the southern Selkirk Mountains subpopulation of woodland caribou may not be a listable entity under our 1996 DPS policy (61 FR 4722, February 7, 1996). We acknowledged that our analysis in the 2008 5-year review did not consider the southern Selkirk Mountains subpopulation of woodland caribou relative to the appropriate taxon allowable under our 1996 DPS policy, the subspecies woodland caribou (*Rangifer tarandus caribou*). Thus, the Service initiated a review of the status of the woodland caribou subspecies to determine if delisting the southern Selkirk Mountains subpopulation of woodland caribou is warranted. Pursuant to that review, on May 8, 2014, we published in the **Federal Register** (79 FR 26504) a 12-month finding on the petition to delist the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*). In that 12-month finding, we stated that, upon review of the best available scientific and commercial information, we found that delisting the species was not warranted, but rather, a revision to the then current listed entity to define a DPS, consistent with our 1996 DPS policy, was appropriate. The Service acknowledges the commenter’s disagreement with the Service’s determination in that matter. Consistent with our determination, we proposed to amend the current listing of the southern Selkirk Mountains subpopulation of woodland caribou by defining the southern mountain caribou DPS, which includes the southern Selkirk Mountains subpopulation of woodland caribou, and we proposed to designate the status of the southern mountain caribou DPS as threatened under the Act.

The Service disagrees with the comment that only species, as opposed to subspecies, can be listed as DPSs under the Act. The Act defines a “species” to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature” (16 U.S.C. 1532(16)). The Service has long interpreted the Act to authorize designation of a DPS of both species and subspecies. The 1996 DPS Policy explains the following: “Restricting listings to full taxonomic species would render the Act’s definition of species, which explicitly includes subspecies and DPS’s of vertebrates, superfluous. Clearly, the Act is intended to authorize listing of some entities that are not accorded the taxonomic rank of species, and the Services are obliged to interpret this authority in a clear and reasonable manner” (61 FR 4722–4723; February 7, 1996). Consequently, the Service believes “that the authority to address DPS’s extends to species in which subspecies are recognized, since anything included in the taxon of lower rank is also included in the higher ranking taxon” (61 FR 4724; February 7, 1996). Courts have specifically found that listing a DPS of a subspecies is a permissible construction of the Act (*e.g.*, *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 274 Fed. Appx. 542, 545 *2 n. 5 (9th Cir. 2008) (unpublished) (“FWS has interpreted the ambiguous language of 16 U.S.C. 1532(16) to allow . . . listing [of a DPS of a subspecies]. Because that is a permissible construction of the statute, we must accord it deference.”); *Defenders of Wildlife v. Jewell*, 176 F. Supp. 3d 975, 1110–11 (D. Mont. 2016) (The Service may list a subspecies of a species as a DPS because “[e]very species necessarily subsumes its own subspecies, meaning that a DPS of a subspecies is also a DPS of the larger species. Moreover, the Act defines ‘species’ to include subspecies, making mere reference to a subspecies statutorily equivalent to referencing a species.”), appeal dismissed (9th Cir. 16–35466) (Oct. 7, 2016)).

(68) *Comment:* One commenter stated that because various closure orders and restrictions have not increased the presence of caribou in the continental United States, caribou in the continental United States should be declared extirpated and delisted. The commenter also stated that a population of woodland caribou did not exist in the United States at the time of listing in 1983, nor since listing, and that, while several caribou were released in

northeastern Washington and northern Idaho in the 1980s and 1990s, all released caribou either moved north into Canada due to lack of suitable habitat or died from predation.

Our Response: We acknowledge that, to date, recovery of the Selkirk Mountain woodland caribou subpopulation has not been achieved, and that although 103 caribou were augmented into the subpopulation in the 1980s and 1990s, this subpopulation is currently in decline. However, until recently, this population was relatively stable and was experiencing slight population growth. The augmentation efforts resulted in a fairly stable population (Wakkinen *et al.* 2010, p. 2) that was slowly increasing at a rate of approximately 7 percent (USFWS 2008, p. 18) in the early 2000s, reaching an estimated population size of 46 individuals in 2008 and 2009. It began declining in 2010 (DeGroot 2014, p. 5), likely due primarily to predation. We also acknowledge that, based on the winter survey efforts, woodland caribou occurrence, and use and distribution within the United States, appears limited. Based on the winter census surveys, from zero to four caribou have been observed in the United States since the surveys were initiated in 2001. However, while it appears few caribou currently utilize habitat within the United States, and that use appears close to the Canadian border, the surveys are only designed and intended to facilitate population trend monitoring. The winter surveys are not intended to, and do not, indicate how extensively (both numbers of individuals and/or distribution of those individuals) or when (*i.e.*, during other times of the season [*e.g.*, summer]) caribou may use habitat within the United States. Additionally, as individuals of this transboundary subpopulation still exist, we are unable to consider this subpopulation as extirpated. Furthermore, as this final rule concludes, the Selkirk Mountain subpopulation of woodland caribou is part of the larger southern mountain caribou DPS comprised of 15 extant subpopulations. Thus, the entire southern mountain caribou DPS (*i.e.*, all extant 15 subpopulations) would have to cease to exist before the Service could consider the DPS as extinct/extirpated. However, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. Although recovery planning is beyond the scope of this listing decision, we are committed to achieving

the conservation and recovery of the DPS, as is required by the Act.

At the time of listing, Scott and Servheen (1984, p. 27) documented two woodland caribou bulls utilizing habitat near Little Snowy Top and Upper Hughes Ridge in Idaho and Sullivan Creek in Washington. These two bulls were part of the transboundary subpopulation occupying habitat in the Selkirk Mountains of northeastern Washington, northwestern Idaho, and southern British Columbia, Canada. Furthermore, 60 woodland caribou were translocated into Ball Creek drainage, Boundary County, Idaho, from 1987 to 1990 (Compton *et al.* 1995, p. 492), and 32 were translocated into northeast Washington from 1996 to 1997 (Katnik 2002, p. 5). As explained above, these caribou were part of the transboundary Selkirk Mountain woodland caribou subpopulation that continues to persist today, and currently utilizes habitat within the United States on a seasonal basis. We expect that successful conservation and recovery of this subpopulation will result in substantially increased frequency, distribution, and use of habitat by caribou within the United States.

Regarding habitat suitability in the U.S. portion of the Selkirk Mountains, results of habitat suitability modeling conducted by Kinley and Apps (2007, pp. 24–25) indicate that there is sufficient high-quality caribou habitat within the U.S. portion of the Selkirk Mountains to support caribou foraging and reproduction. Thus, the availability of high-quality caribou habitat is not currently limiting the growth of this subpopulation. Rather, currently, we believe predation is the overriding proximate factor driving the decline of this population. Predator populations (primarily gray wolves and mountain lions) have very likely benefited from the increased abundance and distribution of prey species (deer, moose, elk) whose population growth and expansion in the Selkirk Mountains have likely benefited from the alteration and fragmentation of the older successional boreal forest through fires (both natural and manmade) and historical silvicultural practices to younger successional forests that these species require. Increased abundance and distribution of these other ungulate prey species (*i.e.*, deer, moose, elk) likely support higher numbers of predators endemic to this ecosystem (MCST 2005, pp. 4–5; Bowman *et al.* 2010, p. 464; McLellan *et al.* 2012, p. 859; Wittmer *et al.* 2005b, pp. 414–415) than would otherwise be naturally supported by the older successional boreal forests. Higher numbers of

predators translates to increased predation pressure on caribou due to the overlap of these other prey species habitats with caribou when the predators opportunistically encounter caribou in the course of searching for these other prey species. Thus, we believe that alteration and fragmentation of the boreal forest landscape is the primary driver that is currently supporting higher populations of alternate prey species that support higher number of predators that in turn have disproportionate predation impacts on caribou. It will likely require greater than 150 years (greater than 16 generations of caribou) of habitat protections for these early successional and fragmented forests to develop the old-growth habitat characteristics (vegetative structure and composition) (Stevenson *et al.* 2001, p. 1) that would begin to restore the natural predator-prey balance of these high-elevation, old-growth forests, and thus reduce predation pressure on caribou.

(69) *Comment:* One commenter stated that there is scientific evidence that refutes the connection of the Selkirk herd to the Canadian population of caribou, so delisting the southern Selkirk Mountains woodland caribou is not justified. The commenter stated, “every agency charged with tracking and maintaining caribou in the United States and Canada agrees that there is absolutely no interaction between the Southern Selkirk population and any others.”

Our Response: The best currently available science indicates that the southern Selkirk Mountain transboundary subpopulation of woodland caribou is largely isolated (geographically) from other woodland caribou subpopulations within the southern mountain caribou DPS (van Oort *et al.* 2011, pp. 221–222; Wittmer *et al.* 2005b, p. 414) due to human-caused habitat fragmentation and loss. Additionally, while we determined that the southern Selkirk Mountain subpopulation is not a listable entity under the Act in accordance with the Service’s DPS policy, we determined that the subpopulation is part of the larger southern mountain caribou DPS, which is listable under the Act in accordance with our DPS policy (79 FR 26504, May 8, 2014). Upon review of the status of and threats to the southern mountain caribou DPS, which includes the southern Selkirk Mountain caribou subpopulation, we determined that the DPS warrants listing under the Act as endangered.

(70) *Comment:* One commenter stated that maintaining secure caribou habitat in Canada and connectivity between the

United States and Canada is essential to the survival of the southern Selkirk Mountain subpopulation.

Our Response: Acknowledging the importance of maintaining secure and effective habitat connectivity for caribou in the Selkirk Mountains between the United States and Canada, the Service designated approximately 30,010 ac (12,145 ha) of critical habitat for caribou adjacent to the Canadian border in northeastern Washington and northwestern Idaho on November 28, 2012 (77 FR 71042). Additionally, Canada has protected 282,515 ac (114,330 ha) of Crown Lands from further timber harvest within the Selkirk Mountains to support woodland caribou conservation (77 FR 71042, November 28, 2012, see p. 77 FR 71066), and the Nature Conservancy of Canada has also purchased approximately 135,908 ac (55,000 ha) of the former Darkwoods property located within the Selkirk Mountains in British Columbia and halted all logging activities in woodland caribou habitat (77 FR 71042, November 28, 2012, see p. 77 FR 71066). The Nature Conservancy lands are essentially surrounded by the protected Crown Lands described above. Thus, the critical habitat designated in the United States adjacent to the border with Canada, together with the protected land adjacent to the border in Canada, comprises approximately 448,443 ac (181,478 ha) of secured and connected habitat that will be managed to support current and future caribou habitat use and movement between the United States and Canada, facilitating the conservation and recovery of the species.

Transplant/Recovery

(71) Comment: We received many comments pertaining to caribou recovery efforts both within the United States and Canada. Several commenters referred to successes and failures of Canada's past, current, and future recovery methods ranging from transplants, maternal penning, wolf sterilization, etc. A couple of commenters suggested that the recovery plan should be improved. One commenter referred to a recent statement from Environment Canada that "Recovery of all southern mountain caribou local population units is technically and biologically feasible." The commenter stated the Service should not scale back recovery efforts or send the message that mountain caribou have no chance of survival in the United States. One commenter suggested that recovery planning should consider identifying and setting aside "lowland matrix habitat" for caribou. One

commenter suggested that both the United States and Canada's recovery planning efforts are inadequate as evidenced by the continued declines of woodland caribou populations. The commenter suggested that additional habitat protections are needed, including banning all old-growth logging, increased restrictions on snowmobile access, and identification of matrix habitat. One commenter suggested that industrial land uses should be curtailed within the recovery area. One commenter expressed concern that the Service has never implemented a recovery plan. Another commenter stated that if we do not take recovery actions now, the last herd of caribou in the contiguous United States will be extirpated. Another commenter stated it is too late to recover caribou. Finally, one commenter requested that the counties potentially affected by recovery planning for caribou (*i.e.*, Boundary and Bonner Counties) be allowed to participate in the recovery planning.

Our Response: Recovery of the southern mountain caribou DPS is biologically feasible. Population augmentation, maternal penning, predator management, and habitat protection are, without limitation, examples of methods that can be utilized to achieve recovery of this DPS. Recovery is likely to require the implementation of a combination of methods. Although recovery planning is beyond the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. To that end, the Service will actively coordinate and participate in the development of a recovery plan with our partners within the United States (*e.g.*, WDFW, IDFG, Tribes, and others) as well as our Canadian partners (*e.g.*, British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others). The recovery plan will identify management needs and population goals for achieving recovery. The Service will apprise the public regarding the development of a recovery plan, as well as specific opportunities to review and provide comment on a draft recovery plan prior to its finalization.

Regarding the comment that we have never implemented a recovery plan, we assume the comment pertains to woodland caribou. We first developed a recovery plan for the previously listed southern Selkirk Mountains subpopulation of woodland caribou in 1985 (USFWS 1985) and updated the recovery plan in 1994 (USFWS 1994a). Several of the 1994 recovery plan's recommended actions were

implemented. For example, one of the plan's objectives was to manage for an increasing population. To accomplish that objective, two separate augmentation efforts transplanted 103 caribou into the southern Selkirk Mountains in the 1980s and 1990s from source populations farther north in British Columbia, Canada. These augmentation efforts resulted in a fairly stable population (Wakkinen *et al.* 2010, p. 2) that was slowly increasing at a rate of approximately 7 percent (USFWS 2008, p. 18) in the early 2000s, reaching an estimated population size of 46 individuals in 2008 and 2009. It began declining in 2010 (DeGroot 2014, p. 5), likely due primarily to predation.

(72) Comment: One commenter stated that the Service should employ more stringent conservation measures, including restricting recreation use in the southern Selkirk Mountain recovery area.

Our Response: Management of lands within the recovery area is not under the purview of the Service. However, as is required by the Act, the Service is committed to the conservation and recovery of this DPS. To that end, we will work with our Federal, State, Tribal, and Canadian land management partners to develop and implement appropriate conservation plans, including recreational management plans, to facilitate the conservation and recovery of this DPS.

(73) Comment: One commenter, referencing several studies documenting separate caribou populations altering movements within their home range and/or temporarily abandoning portions of their home range during population increases and declines over many decades, suggested that full occupation of the southern Selkirk Mountain caribou subpopulation recovery area may similarly take many years as the subpopulation slowly expands (number of caribou in the subpopulation increases). Thus, the commenter suggested that planning must be initiated now to ensure successful recovery and full occupation of the U.S. Selkirk ecosystem occurs.

Our Response: Some of the available scientific information indicates there is some annual variation in caribou home range use and that portions of caribou home ranges may go unused for many years (Freddy 1974, p. 15; Kelsall (1968) and Skoog (1968) in Freddy 1974, p. 15). Although recovery planning is beyond the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. To that end, the Service will actively coordinate and participate in the development of a

recovery plan with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) as well as our Canadian partners (e.g., British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others). The recovery plan will identify management needs and population goals for achieving recovery of this transboundary DPS.

(74) *Comment:* One commenter stated that even though caribou have been transported and reintroduced into the Selkirk Mountains of Idaho and Washington, nothing has changed; the transplanted caribou died naturally, were eaten by predators, or migrated back to Canada. The commenter stated that the caribou were reintroduced around the same time that grizzly bears were introduced into the area and that wolf packs are increasing in the area after being reintroduced, implying that predation by these species has hampered recovery efforts.

Our Response: We acknowledge that, to date, recovery of the Selkirk Mountain woodland caribou subpopulation has not been achieved, and that although 103 caribou were augmented into the subpopulation in the 1980s and 1990s, this subpopulation is currently in decline. However, until recently, this subpopulation was relatively stable and was experiencing slight population growth. The augmentation efforts resulted in a fairly stable population (Wakkinen et al. 2010, p. 2) that was slowly increasing at a rate of approximately 7 percent (USFWS 2008, p. 18) in the early 2000s, reaching an estimated population size of 46 individuals in 2008 and 2009. It began declining in 2010 (DeGroot 2014, p. 5), likely due primarily to predation.

Grizzly bears have not been reintroduced or augmented into the Selkirk Mountains in Idaho or Washington. The Selkirk Ecosystem currently supports a low density grizzly bear population, but the species has always occurred in this area. Likewise, gray wolves have not been reintroduced into the Selkirk Mountains in Idaho or Washington. Wolves were reintroduced into central Idaho and Yellowstone National Park in 1994, as nonessential experimental populations in accordance with the Service's final environmental impact statement (FEIS; USFWS 1994b, entire). The Service's FEIS identified that, over a timeframe of 15 years prior to 1994, wolves had naturally recolonized northwest Montana as a result of natural dispersal from Canada (USFWS 1994b, p. vi). Thus, it is likely that recolonization of the Selkirk Mountains by wolves is a result of

dispersal of wolves from farther north in Canada and/or northwest Montana. However, we acknowledge that currently predation by primarily wolves, but to a lesser extent grizzly bears and mountain lions, is likely affecting the status of caribou in the Selkirk Mountains. While recovery planning is beyond the scope of this listing decision, the Service will work with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) as well as our Canadian partners (e.g., British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others) to develop appropriate conservation measures addressing predation, among other threats, that potentially affect the continued existence of this DPS.

(75) *Comment:* One commenter questioned the use of Kinley and Apps (2007) to establish habitat management standards for caribou recovery because the document has not been subject to independent review. The commenter also suggested that fragmentation of the ecosystem by major transportation corridors and industrial-scale land uses must be considered when undertaking recovery planning.

Our Response: The Act requires the Service to make a decision based solely on the best scientific and commercial data information available. We consider Kinley and Apps (2007) to be the best available data. Please see our response to *Comment (43)* for an explanation of what information we may consider. Additionally, the analysis under Factor A in this rule identifies that major highways (e.g., Trans-Canada Highway 3) and industrial-scale land uses (e.g., mining) are threats to the continued existence of the southern mountain caribou DPS. Although recovery planning is beyond the scope of this listing decision, the Service will work with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) as well as our Canadian partners (e.g., British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others) to develop appropriate conservation measures addressing these threats, among other threats, that potentially affect the continued existence of this DPS (see our response to *Comment (74)*).

(76) *Comment:* One commenter questioned the Service's reliance on a private entity's (The Nature Conservancy) ownership of land towards contributing to the recovery of caribou in southern British Columbia, as there are no legal regulations requiring the private entity to manage the land for caribou.

Our Response: The Nature Conservancy of Canada (NCC) is Canada's leading national land conservation organization that acquires natural areas for the protection of their intrinsic value and for the benefit of mankind. The NCC has a long-documented and proven history (dating back to the 1960s) of acquiring, protecting, and managing natural areas, and has helped conserve more than 1.1 million ha (2.8 million ac) of ecologically significant land in Canada (NCC 2011, p. 20). The NCC has developed, has published, and is implementing the Darkwoods Conservation Area, Property Management Plan that contains these goals, among others, for woodland caribou (NCC 2011, p. 5): (1) Restore and maintain mountain caribou habitat and movement; (2) restrict human access to core mountain caribou and grizzly bear habitat; and (3) restore and maintain old-forest attributes in old-growth and young cedar-hemlock forests. The Service believes that it is appropriate to take NCC's conservation efforts towards caribou population restoration into account, along with the efforts of others, as appropriate.

Take

(77) *Comment:* One commenter stated that the legislative history explains that it was Congress's express intent to only regulate purely private behavior for those species facing an immediate risk of extinction and, thus, only apply the take prohibition to endangered species as a whole, and selectively for threatened species on an individual basis, provided that the Service determined it necessary and advisable. The commenter also stated that by proposing to list the southern mountain caribou DPS as threatened under the Act, the Service did not identify that section 9 take prohibitions would be extended to the DPS.

Our Response: In our May 8, 2014, proposed rule (79 FR 26504), we identified that the regulatory protections of section 9 of the Act (including take prohibitions) are largely the same for species listed as endangered or threatened (see p. 79 FR 26533). This is true for the following reason. In accordance with section 4(d) of the Act, by regulation, the Service may extend the protections afforded endangered species to species listed as threatened. Regulations codified at 50 CFR 17.31(a) extended the section 9 take prohibitions for endangered species to species listed as threatened, except where the Service develops and implements a 4(d) rule in accordance with regulations codified at 50 CFR 17.31(c), in which case the 4(d)

rule will contain all the prohibitions and exceptions applicable to the listed threatened species. In this case, for our proposed amended listing of the southern mountain caribou DPS as threatened, we did not propose to implement a 4(d) rule. Thus, all protections applicable to an endangered species (including take) were intended to be extended to the proposed amended listing of the southern mountain caribou DPS as threatened. However, this is a moot point, as pursuant to peer review, public comments, and our additional analysis of all the science pertaining to this DPS, we determined that the status of and threats to this DPS warrant listing it as endangered.

Critical Habitat

(78) *Comment:* We received numerous comments regarding critical habitat. Some commenters suggested that we were proposing to decrease the critical habitat designation from 375,562 acres (151,985 ha) to 30,010 ac (12,145 ha) in the May 8, 2014, proposed amended listing rule. Some commenters indicated agreement with our proposal to reaffirm the final critical habitat designation, while others disagreed with this proposal. Many commenters believe the critical habitat designation of 30,010 ac (12,145 ha) is inadequate and suggested the original proposal of 375,562 ac (151,985 ha) would be more appropriate. Several commenters believe the data used to delineate the 30,010 ac (12,145 ha) was not reliable due to lack of scientific observation and records, and the historical range of caribou in Idaho and Washington extended much farther than the current designation of critical habitat. One commenter implied that the reduction from the proposed acreage of 375,562 (151,985 ha) to the final acreage of 30,010 (12,145 ha) occurred because the Service determined that the southern Selkirk Mountains subpopulation did not qualify as a DPS unto itself but was part of the larger southern mountain caribou DPS composed of several subpopulations. Another commenter stated that the Service reduced the protection status of the southern Selkirk Mountain subpopulation (*i.e.*, changed from endangered to threatened) to facilitate reducing the recovery area by 90 percent, leaving most of the critical habitat in Washington State. Another commenter stated that in reducing the critical habitat recovery area by 90 percent, the Service essentially abandoned the goal of caribou recovery.

Our Response: On November 30, 2011, we published a proposed rule (76 FR 74018) to designate approximately 375,562 ac (151,985 ha) as critical

habitat for the southern Selkirk Mountains population of the woodland caribou. On November 28, 2012, we published a final rule (77 FR 71042) designating approximately 30,010 acres (12,145 ha) of critical habitat for the southern Selkirk Mountains population of woodland caribou. Here we are simply reaffirming that decision for the southern mountain caribou DPS; we are not altering (*i.e.*, increasing or decreasing) the acreage of critical habitat designated for the southern Selkirk Mountains woodland caribou subpopulation in the November 28, 2012, final rule. Please see that final rule for a full discussion and analysis of the rationale and reasons for the area and acreage of the final critical habitat designation.

In the November 28, 2012, final rule, we based our final designation of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou on the best available scientific information. In that final rule, we determined that the majority of habitat essential to the conservation of this subpopulation occurs in British Columbia, Canada, although the U.S. portion of the habitat used by the caribou makes an essential contribution to the conservation of the species. Regulations at 50 CFR 424.12(g) state that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction; therefore, any designation of critical habitat for the southern mountain caribou DPS must be limited to that portion of the DPS that occurs within the boundaries of the United States. We designated as critical habitat approximately 30,010 ac (12,145 ha) of land within Boundary County, Idaho, and Pend Oreille County, Washington, that meet the definition of critical habitat (see our response to *Comment (15)* for the definition of critical habitat).

Additionally, the Act does not require designation of critical habitat throughout a listed species' historical range. The Act does require that we propose and finalize critical habitat designations concurrent with issuing proposed and final listing rules, respectively, to the maximum extent prudent and determinable. Designation of critical habitat for listed species may include areas within the geographical area occupied by the species at the time it is listed, as well as areas outside the geographical area occupied by the species at the time of listing. Areas occupied by the species at the time of listing and designated as critical habitat must contain the physical and biological features essential to the conservation of the species and which may require

special management considerations or protections. The Service may designate specific areas not occupied by the species at the time of listing, but only to the extent that such areas are determined essential for the conservation of the species.

Regarding occupancy at the time of emergency listing in 1983 (48 FR 1722, January 14, 1983) and final listing in 1984 (49 FR 7390, February 29, 1984), neither of these rules defined "occupancy." The original area of occupancy (375,562 ac (151,985 ha)) identified in the November 30, 2011, proposed critical habitat rule (76 FR 74018) was based on the 1983 emergency listing and 1984 final listing rule descriptions of "approximate area of utilization" (48 FR 1722) and "area of normal utilization" (49 FR 7390), which we equated to mean "occupancy at the time of listing." However, peer review comments submitted on the proposed critical habitat rule caused us to reexamine the basis of our analysis pertaining to the geographical area occupied by the species at the time of listing in 1983 and 1984. Based on the reexamination, we considered the studies conducted by Scott and Servheen (1984 and 1985) to be the most definitive with regard to establishing the area occupied by the southern Selkirk Mountain subpopulation of woodland caribou at the time of listing in 1983 and 1984. Scott and Servheen, who conducted their studies on this subpopulation of woodland caribou from 1983 to 1984, documented extensive use by caribou of habitat in British Columbia in drainages just north and adjacent to B.C. Highway 3. In contrast, they documented use of habitat in the United States by only two bull caribou located near Little Snowy Top and Upper Hughes Ridge in Idaho, and Sullivan Creek in Washington (Scott and Servheen 1984, p. 19). Caribou were not documented any farther south within Washington or Idaho during the course of helicopter and ground tracking surveys. Consequently, we determined that the area generally depicted in Scott and Servheen (1984, p. 27) as the area that was occupied by this subpopulation of caribou at the time they were listed in 1983 and 1984. The area actually designated as critical habitat for this subpopulation (30,010 ac (12,145 ha)) was adjusted for elevation and habitat use based on seasonal habitat suitability modeling (see 77 FR 71063–71064, November 28, 2012). The Service determined that areas within the United States not occupied by this subpopulation at the time of listing were not essential for the conservation of the

species (see 77 FR 71042, November 28, 2012, for a complete discussion on this topic).

Furthermore, designation of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou occurred well before we undertook the DPS analysis for this species. Thus, our determination that the southern Selkirk Mountains woodland caribou subpopulation was not a DPS had no bearing on the final critical habitat designation. However, because the southern Selkirk Mountains subpopulation is part of the southern mountain caribou DPS, and is the only subpopulation within this DPS that occurs within the United States and where we have the authority to designate critical habitat, we reaffirm our November 28, 2012, final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou (77 FR 71042, November 28, 2012) as critical habitat for the southern mountain caribou DPS.

Finally, the final critical habitat designation of 30,010 ac (12,145 ha) did not affect or reduce the size of the existing recovery area (also known as the recovery zone) boundary, and did not signal that habitat outside the designated area is unimportant or may not contribute to the recovery of the species. As stated previously, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in section 2(a) of the Act. Although recovery planning is beyond the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. Please see our response to *Comment (15)* for more information on this topic.

(79) Comment: One commenter questioned why critical habitat was not designated in other States in the lower 48 States where caribou historically occurred (*i.e.*, Montana, Minnesota, Wisconsin, Michigan, Vermont, New Hampshire, and Maine). The commenter suggested the Service has not studied all historical caribou ranges and critical habitat should have been designated in these other States.

Our Response: See our analysis under Evaluation of the Southern Mountain Caribou as a Distinct Population Segment and our response to *Comment (78)*. Additionally, the range of the southern Selkirk Mountain

subpopulation of woodland caribou only encompasses the States of Washington and Idaho within the United States. While individuals of the woodland caribou subspecies historically occurred in other States within the United States, these individuals were most likely part of other subpopulations of woodland caribou, separate from the southern Selkirk Mountain woodland caribou subpopulation.

(80) Comment: One commenter asserted that, if the Service maintains the listing, it must analyze the impacts that the listing has on communities, residents, and businesses before regulating take or critical habitat.

Our Response: Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, the Secretary may determine whether any species is an endangered or threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. The Act does not provide any language allowing the consideration of economic impacts when making listing decisions for species; listing decisions must be made solely on the basis of the best scientific and commercial data available (16 U.S.C. 1533(b)(1)(A)) pertaining to the biological status of and threats to the persistence of the species in question. The Act does require, however, the consideration of economic impacts when making decisions to designate critical habitat for listed species.

Relative to this DPS, we completed an economic analysis on the designation of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou in accordance with section 4(b)(2) of the Act. We announced availability of the draft economic analysis for review, and reopened a 30-day public comment period to take comment on the draft economic analysis for the proposed designation of critical habitat, on May 31, 2012 (77 FR 32075). We published the final economic analysis, which incorporated comments received on the draft economic analysis during the public comment period,

concurrently with the final rule designating critical habitat for southern Selkirk Mountains subpopulation of woodland caribou on November 28, 2012 (77 FR 71042). The May 8, 2014, proposed rule (79 FR 26504) to amend the listing of the southern Selkirk Mountains subpopulation of woodland caribou to the southern mountain caribou DPS stated that we are “reaffirming” our November 28, 2012, final critical habitat designation. As such, the final economic analysis completed for the designation of critical habitat in 2012 (77 FR 71042, November 28, 2012) is incorporated by reference into this final determination for the southern mountain caribou DPS. Please see the November 28, 2012, final critical habitat rule (77 FR 71042) for an analysis of the economic impacts associated with the designation of critical habitat that is applicable to this DPS listing. Subsequent to that final critical habitat rule, and the reopening of the comment period on April 19, 2016 (81 FR 22961), for the final critical habitat rule in response to the March 23, 2015, court order to address a procedural error, the Service has not received any additional or new economic information or data. Additionally, because we are simply “reaffirming” a critical habitat designation for which an economic analysis was completed, it is not necessary to complete a new economic analysis.

(81) Comment: One commenter suggested that because the take prohibition does not apply to threatened species, it is inappropriate to conduct an incremental effects analysis for assessing economic impacts stemming from critical habitat designations for species listed as, or proposed to be listed as, threatened. Several commenters stated that an economic impact analysis for the 30,010 ac (12,145 ha) of critical habitat in Boundary and Pend Oreille Counties was not included in the proposed rule. One commenter stated that because critical habitat designations must be made “on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat” (16 U.S.C. 1533(b)(2)), the Service should include an economic impact analysis in the final rule. Several commenters referenced the economic analysis commissioned by Bonner County and Idaho State Snowmobile Association (ISSA), stating that the analysis demonstrates the detrimental effect

continued regulation will have on the local economy, in contrast to the Service's economic analysis.

Our Response: Regarding the take prohibition for threatened species, refer to our response to *Comment (77)* that discusses the applicability of take prohibitions to endangered and threatened species. Regarding the economic analysis, see our response to *Comment (80)*. Furthermore, we disagree that it is inappropriate to conduct incremental effects analyses when designating critical habitat for threatened species. The Act does not require or stipulate that critical habitat analyses should be conducted differently for endangered species versus threatened species. The Act simply requires that economic impacts be considered when making critical habitat designations for endangered or threatened species, but does not define or describe how such analyses should be conducted or what should be considered within the context of the analysis.

Regarding the economic analysis commissioned by Bonner County and ISSA, the analysis was based on the impacts to the economies within the area proposed for designation as critical habitat (approximately 375,562 acres (151,985 ha)) and not on the area actually designated as critical habitat (approximately 30,010 acres (12,145 ha)), a reduction of 345,552 ac (139,839 ha). Additionally, the area designated as critical habitat is comprised entirely of National Forest lands (CNF, IPNF, and the Salmo-Priest Wilderness Area); there are no non-Federal (*i.e.*, State or private) lands contained within the area designated as critical habitat. Within the area designated as critical habitat, the CNF and IPNF have routinely conducted section 7 consultations with the Service on the effects of their actions upon woodland caribou (including their habitat) since the species was listed under the Act in 1984 (emergency listing in 1983, final listing in 1984). Consequently, the only economic impacts that would accrue due solely to the critical habitat designation are minor and incremental to Federal agencies (*i.e.*, CNF, IPNF) resulting from additional administrative costs associated with section 7 consultation to consider the effects of Federal actions upon critical habitat.

(82) Comment: One commenter stated that the Service should exclude any areas from critical habitat designation where the burden associated with the designation would exceed the benefits. The commenter suggested the economic analysis commissioned by Bonner County and ISSA demonstrated the

significant costs to local communities that the Service should consider when determining whether certain areas should be excluded from critical habitat designation.

Our Response: Section 4(b)(2) of the Act allows the Secretary to exclude an area from designation as critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat would result in the extinction of the species concerned. As stated previously, in the May 8, 2014, proposed amended listing rule (79 FR 26504), we are "reaffirming" our November 28, 2012, final critical habitat designation (77 FR 71042) wherein the Secretary did not exclude any areas from designation as critical habitat. Thus, in this final listing determination for the southern mountain caribou DPS, no areas were excluded from designation as critical habitat. Regarding the economic analysis commissioned by Bonner County and ISSA, see our response to *Comment (81)*, and for a more complete discussion on exclusions, refer to the Exclusions section of our final critical habitat designation (77 FR 71042, November 28, 2012, see p. 77 FR 71076).

(83) Comment: One commenter stated that it is inappropriate to "reaffirm" critical habitat that was designated for the southern Selkirk Mountains population of woodland caribou (*i.e.*, previously listed entity) to the southern mountain caribou DPS, as the newly listed DPS is not the same listed entity upon which the critical habitat designation was based. Another commenter stated the Service cannot accurately determine or establish critical habitat for the southern mountain caribou DPS without listing them as endangered, or before the International Recovery Plan, contracted out to the Tribe by the Service, is completed.

Our Response: The southern mountain caribou DPS is composed of 15 extant subpopulations, including the southern Selkirk Mountains subpopulation. All subpopulations, except the southern Selkirk Mountains subpopulation, occur entirely within British Columbia, Canada; the southern Selkirk Mountains subpopulation is a transboundary population that occurs in both the United States (in northeastern Washington and northwestern Idaho) and in British Columbia, Canada. Regulations at 50 CFR 424.12(g) state that critical habitat shall not be

designated within foreign countries or in other areas outside of U.S. jurisdiction; therefore, any designation of critical habitat for the southern mountain caribou DPS must be limited to that portion of the DPS that occurs within the boundaries of the United States. Thus, the only critical habitat designation that can be considered for the southern mountain caribou DPS is the same area that met the definition of critical habitat for the southern Selkirk Mountains subpopulation.

On November 28, 2012, we published a final rule (77 FR 71042) designating critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou that we found to meet the definition of critical habitat as described in our response to *Comment (15)*. Since we can only designate critical habitat within the United States, we must identify those specific areas within the United States that we consider to have been occupied at the time of listing, and that provide the physical or biological features essential to the conservation of the southern mountain caribou DPS, and that may require special management considerations or protection. However, as the physical or biological features essential to the conservation of the southern mountain caribou DPS are no different than those essential to the conservation of the formerly listed southern Selkirk Mountains subpopulation of woodland caribou, and the geographical area in the United States occupied by this transboundary subpopulation of woodland caribou at the time of listing remains unchanged, the resulting area in the United States that meets the definition of critical habitat for the southern mountain caribou DPS corresponds exactly to the critical habitat identified for the southern Selkirk Mountains population of woodland caribou in our final rule published on November 28, 2012 (77 FR 71042). As a result, we have determined that the specific area identified in the November 28, 2012, final critical habitat designation (77 FR 71042) meets the definition of critical habitat for this DPS, and we have determined that there are no additional areas that meet the definition of critical habitat that should be included. Therefore, we reaffirm the designation of approximately 30,010 ac (12,145 ha) in one unit within Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the southern mountain caribou DPS.

Relative to designating critical habitat for endangered versus threatened species, section 4(a)(3)(A)(i) of the Act requires the designation of critical habitat for both endangered and

threatened species. Also, the Service need not wait for completion of a recovery plan before making a critical habitat determination. To the contrary, section 4(a)(3) of the Act requires designation of critical habitat, to the maximum extent prudent and determinable, concurrently with making a listing determination. Section 4(f) of the Act requires the Service to develop recovery plans for listed species, unless the plans will not promote the conservation of the species; the Act does not specify a time constraint for development of recovery plans.

(84) Comment: One commenter suggested that comments from the State of Idaho objecting to the designation of State endowment lands, managed by the Idaho Department of Lands, as critical habitat, as was originally proposed, must be viewed in light of the State's fiduciary responsibility to maximize the return from the management of said lands to the trust beneficiaries.

Our Response: The area designated as critical habitat was based on the area occupied by caribou at the time of listing as depicted by Scott and Servheen (1984, p. 27), and does not contain any State endowment lands. Furthermore, the decision not to designate any other areas not occupied by caribou at the time of listing (*i.e.*, the State endowment lands contained within the recovery zone boundary) was based on our determination that such lands were not essential to the conservation of the species. Because we determined that the area administered as State endowment lands was not essential to the conservation of the species, the State's comments pertaining to the economic importance of the area to the State or economic impacts stemming from critical habitat designation of said area had no bearing on our final decision. See the final critical habitat determination (77 FR 71042, November 28, 2012) for a full discussion and analysis of the rationale and reasons for the area and acreage of the final critical habitat designation.

(85) Comment: One commenter stated that designating 30,010 ac (12,145 ha) as critical habitat will preclude other uses, including recreation and resource conservation activities, with no real benefit to caribou.

Our Response: The designation of critical habitat does not affect land ownership or establish a wilderness area, preserve or wildlife refuge, nor does it open or restrict an area to human access or use. In this case, the area designated as critical habitat for the southern mountain caribou DPS is entirely composed of Federal land, the majority of which is situated with the

Salmo-Priest Wilderness Area in Washington State, and the remainder is either administered by the CNF or the IPNF. Both the CNF and IPNF have LRMPs that contain standards and guidelines addressing control and management of recreational and resource conservation activities within caribou habitat, both within the area designated as critical habitat as well as the existing Selkirk Mountain Caribou Recovery Zone, in which the designated critical habitat is contained. Thus, through implementation of their LRMPs, both the CNF and IPNF currently implement extensive measures to protect caribou and their habitat. We have no information that would indicate this designation of critical habitat will result in the closure of areas to public access or result in restrictions to currently permissible activities, including recreation and resource conservation activities.

(86) Comment: One commenter stated that closing "these areas" will prevent timber and wildfire management, and adversely affect the ability of the U.S. Border Patrol (USBP) to do its job along the Canadian border.

Our Response: We assume the commenter is referring to the designation of critical habitat in the Selkirk Mountains for the southern mountain caribou DPS when referencing "these areas." See our response to *Comment (85)*.

Regarding USBP activities, the designation of critical habitat in the Selkirk Mountains for the southern mountain caribou DPS would not restrict, regulate, or determine the ability of the USBP to operate in close proximity to the U.S. border. Within caribou habitat, the USBP operates, for the most part, on National Forest System lands and its existing roads and trails. The March 31, 2006, Memorandum of Understanding (MOU) between the Secretary of the Interior, Secretary of Homeland Security, and Secretary of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands Along the U.S. Borders commits the agencies to preventing illegal entry into the United States, protecting Federal lands and natural and cultural resources, and where possible, preventing adverse impacts associated with illegal entry by cross-border-violators (CBVs). The intent of the MOU is to provide consistent goals, principles, and guidance related to border security such as law enforcement operations; tactical infrastructure installation; utilization of roads; minimization and/or prevention of significant impact on or impairment of

natural and cultural resources; and implementation of the Wilderness Act, Endangered Species Act, and other related environmental laws, regulations, and policies across land management agencies. The MOU is also intended to facilitate coordination and sharing information on threat assessments and other risks, plans for infrastructure and technology improvements on Federal lands, and operational and law enforcement staffing changes. Through this 2006 MOU, and local groups such as the Spokane Sector Borderlands Management Task Force, the three departments are cooperating to understand, respect, and accomplish their respective missions. The MOU includes provisions for Customs and Border Protection (CBP) vehicle motor operations on existing public and administrative roads and/or trails and in areas previously designated by the land management agency for off-road vehicle use at any time, provided that such use is consistent with presently authorized public or administrative use. It also includes provisions for CBP requests for access to additional Federal lands (*e.g.*, areas not previously designated by the land management agency for off-road use) for such purposes as routine patrols, nonemergency operational access, and establishment of temporary camps or other operational activities. The MOU states, "Nothing in this MOU is intended to prevent CBP-BP agents from exercising existing exigent/emergency authorities to access lands, including authority to conduct motorized off-road pursuit of suspected CBVs at any time, including in areas designated or recommended as wilderness, or in wilderness study areas when, in their professional judgment based on articulated facts, there is a specific exigency/emergency involving human life, health, safety of persons within the area, or posing a threat to national security, and they conclude that such motorized off-road pursuit is reasonably expected to result in the apprehension of the suspected CBVs." Accordingly, there is no verifiable information that would suggest the designation of critical habitat in the Selkirk Mountains for the southern mountain caribou DPS would affect CBP operations.

(87) Comment: One commenter stated that because the vast majority of habitat for this DPS is found in Canada, the commenter agreed with our use of existing management and protection of caribou habitat in Canada in our critical habitat determination for this DPS relative to the United States.

Our Response: We acknowledge this comment.

(88) *Comment*: One commenter requested that the Service consider the needs of long-time local residents of Boundary, Bonner, and Pend Oreille Counties to log, hunt, and forage for their subsistence when deciding what land is needed to preserve the woodland caribou as a species.

Our Response: In the November 28, 2012, final critical habitat determination (77 FR 71042), we based our final designation of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou on the best available scientific information, including comments and information received from peer reviewers, Federal and State agencies, the Kootenai Tribe of Idaho, the Kalispel Tribe of Indians, and the general public, and after taking into consideration, as required by section 4(b)(2) of the Act, the economic impact, the impact on national security, and any other relevant impact of the critical habitat designation. All of the areas designated as critical habitat in the November 28, 2012, final critical habitat determination (77 FR 71042), as reaffirmed in this final rule, contain the physical or biological features (PBFs) and habitat characteristics essential to conserve the species. Again, the designation of critical habitat does not affect land ownership or establish a wilderness area, preserve or wildlife refuge, nor does it open or restrict an area to human access or use. Refer to the *Criteria Used to Identify Critical Habitat* section in the November 28, 2012, final critical habitat determination (77 FR 71042, see pp. 77 FR 71071–71073) for more information.

(89) *Comment*: One commenter asserted that the final critical habitat rule is arbitrary, capricious, and contrary to the Act because the Service failed to demonstrate how protecting the area that supports the existing small population of caribou in the southern Selkirk Mountains will allow the population to expand in size and geographic distribution, which the Service has repeatedly stated, is necessary for recovery. Another commenter stated that there is no support in the record to show that management of Canadian lands plus the small amount of critical habitat in the United States is sufficient to recover the southern Selkirk Mountains caribou subpopulation.

Our Response: Our critical habitat designation is consistent with the purposes of the Act. The Service can only designate critical habitat within the United States (50 CFR 424.12(g)) that we consider to have been occupied at the time of listing, and that provides the PBFs essential to the conservation of the

species and that may require special management considerations or protections; the Service may also designate areas outside the geographical area occupied by the species at the time of listing provided that such areas are determined essential for the conservation of the species (see our response to *Comment* (15)).

In the November 28, 2012, final critical habitat determination (77 FR 71042), which the Service proposed to reaffirm in our May 8, 2014, proposal to amend the listing of the southern mountain caribou DPS (79 FR 26504), the Service based our final designation of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou on the best available scientific information. As we stated in our final critical habitat rule (77 FR 71042, November 28, 2012, see p. 77 FR 71064), our analysis of that information led us to conclude that, for reasons not fully understood, this subpopulation of caribou appears to be primarily dependent upon the availability of habitat in British Columbia. We concluded that the majority of habitat essential to the conservation of the southern Selkirk Mountains subpopulation of woodland caribou occurs in British Columbia, Canada, and the U.S. portion of the habitat used by the caribou makes an essential contribution to the conservation of the species. We determined that the 30,010 ac (12,145 ha) designated as critical habitat within the Selkirk Mountains in the United States, combined with the amount of habitat protected and managed for woodland caribou within Canada, meets the amount of habitat recommended to be secured and enhanced in the 1994 recovery plan (443,000 ac, (179,000 ha)) to support a recovered population (USFWS 1994, pp. 28, 30–31). As we noted in the final critical habitat rule (77 FR 71042, November 28, 2012, see p. 77 FR 71066), Canada has protected 282,515 ac (114,330 ha) of Crown Lands from further timber harvest within the Selkirk Mountains to support woodland caribou conservation (DeGroot 2012, pers. comm.), and the NCC has purchased and is managing approximately 135,908 ac (55,000 ha) of the former Darkwoods property located within the Selkirk Mountains in British Columbia for caribou (The NCC 2011, p. 4; DeGroot 2012, pers. comm.). These acres in Canada, when added together with the U.S. acres of designated critical habitat, provides approximately 448,443 ac (181,478 ha) of habitat protected within the Selkirk Mountains for woodland caribou conservation. Additionally,

areas in the United States designated as critical habitat for the species are immediately adjacent to, and contiguous with, the Crown Lands protected in Canada for woodland caribou conservation. The protection of these connected habitats in the United States and British Columbia is intended to facilitate the expansion of this subpopulation (both geographic distribution and number of individuals) as well as continued woodland caribou movement and seasonal habitat use and other behaviors that this population currently and historically exhibited.

Finally, while recovery planning is outside the scope of this listing decision, we are committed to achieving the conservation and recovery of the DPS, as is required by the Act. The Service also acknowledges that the existing 1994 recovery plan that is specific to the southern Selkirk Mountains subpopulation of this DPS is outdated. The Service will actively coordinate and participate in the development of a recovery plan with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) as well as our Canadian partners (e.g., British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others) to address recovery of this DPS. The Service will apprise the public regarding the development of a recovery plan, as well as specific opportunities to review and provide comment on a draft recovery plan prior to its finalization.

(90) *Comment*: One commenter referred to a 2009 U.S. District of Arizona court case involving critical habitat for the jaguar (*Panthera onca*) where the court remanded a decision by the Service not to designate critical habitat in the United States for the jaguar (*Center for Biological Diversity v. Kempthorne*, 607 F.Supp.2d 1078 (D. Ariz 2009); CV 07–372 TUC JMR; CV 08–335–TUC JMR), and suggested a similar reasoning found by the court to remand the decision to the Service is applicable to our final critical habitat determination for caribou. The commenter also referred to another court case (*Center for Biological Diversity v. Army Corps of Engineers*, CV 03–29–M–DWM (D. Mont. May 25, 2005)) wherein the Plaintiff prevailed in its challenge to the Service's decision not to designate unoccupied habitat as critical habitat for the Kootenai River white sturgeon (*Acipenser transmontanus*; sturgeon)."

Our Response: The underlying facts of the final critical habitat determination for caribou are dissimilar from the referenced court cases. In the jaguar case, the Service did not designate

critical habitat in the United States that was occupied by the species when it was listed under the Act. Essentially, in the jaguar case, the Service determined that even though a few jaguars were likely utilizing habitat in the United States on, at least, an intermittent basis, designation of critical habitat was not prudent because the small amount of habitat (constituting potentially less than 1 percent of the jaguar's current range) potentially used by the species in the United States did not contribute significantly to their survival or recovery; the Service determined there were no areas in the United States, occupied by the species at the time of listing, that were essential to the conservation of the species. The court found these reasons to be not compelling and remanded the decision to the Service. In contrast, in the final caribou critical habitat determination (77 FR 71042, November 28, 2012), the Service designated critical habitat in the United States for the species in the area that was occupied by the species at the time it was listed.

In the sturgeon case, plaintiffs argued that the area designated as critical habitat did not contain the primary constituent elements (now referred to as the physical and biological features (PBFs)) identified in the final critical habitat rule and suggested that the Service should designate as critical habitat areas that were currently not known to be occupied by sturgeon but that contained the PBFs; the lacking PBFs pertained to spawning substrate. The judge agreed and remanded the case to the Service for reconsideration. It should be noted that when the area was originally designated as critical habitat the Service believed the area did, in fact, provide the spawning substrate PBF. However, through new science generated subsequent to the final critical habitat determination, the Service learned that the designated critical habitat did not provide spawning substrate. Consequently, the Service re-evaluated the critical habitat determination, and designated the area unoccupied by sturgeon, but available to them as critical habitat (73 FR 39506, July 9, 2008). In contrast to facts the surgeon case, the area designated as critical habitat for caribou provides the identified PBFs for caribou. Please refer to the final critical habitat determination for a description of the PBFs (77 FR 71042, November 28, 2012, see p. 77 FR 71070).

In our final critical habitat rule (77 FR 71042, November 28, 2012), we determined that the 30,010 ac (12,145 ha) of occupied, designated critical habitat in the United States made an

essential contribution to the species conservation when added to the approximately 418,423 ac (169,329 ha) of caribou habitat protected in Canada. Furthermore, the caribou habitat designated as critical habitat in the United States is adjacent to and contiguous with habitat in Canada, such that movement and habitat use by individuals of this population between the United States and Canada will be facilitated. We also determined that currently unoccupied habitat in the United States, which was historically part of the species' range, was not essential for the species' conservation because, as we stated in that final rule, the best available scientific information indicates that the range of this population appears to have shifted northward. For reasons not fully understood, the southern Selkirk Mountains population of woodland caribou continues to utilize habitat in Canada to a greater extent than would otherwise be expected based on habitat suitability modeling.

(91) Comment: One commenter challenged the Service's statement that the 1994 recovery plan is outdated and no longer represents the best available science regarding the essential conservation needs of the southern Selkirk Mountains population of caribou relative to identifying the essential conservation needs of the Southern Selkirk Mountain population, which the Service made during the process of identifying critical habitat for the population. The commenter asserted that the Service's statement is contradicted by the Service's 2008 5-year review that stated, "the contracting range of the South Selkirk population, the small number of animals in the population, and the limited genetic exchange between the South Selkirk population and adjacent populations threaten population viability" and a Service-issued 2008 biological opinion stating that the primary conservation needs for this caribou population still include expanding the size and distribution of the existing population; expanding both size and distribution of southern Selkirk Mountain caribou population is stated as objectives in the 1994 recovery plan.

Our Response: We acknowledge that the existing southern Selkirk Mountain caribou subpopulation is small, occupies a limited geographic area, and is currently declining. We also acknowledge that increasing the size and distribution of this subpopulation are objectives of the 1994 recovery plan. However, the 1994 recovery plan identifies these as "interim" objectives, and states that development of specific

long-term recovery goals at that time were not appropriate due to the inadequacy of existing ecological data (Service 1994a, p. 27). Since development of the 1994 recovery plan, much new scientific information has been learned about this subpopulation, including, but not limited to, caribou habitat use and movement patterns and predation threats. Therefore, the 1994 recovery plan, which is specific to the southern Selkirk Mountains subpopulation of this DPS, is outdated. Additionally, because the southern Selkirk Mountains subpopulation has now been correctly identified as composing part of the larger southern mountain caribou DPS, the Service, as is required by the Act, will actively coordinate and participate in the development of a recovery plan with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) as well as our Canadian partners (e.g., British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others) to address recovery of the southern mountain caribou DPS.

(92) Comment: One commenter stated that in the final critical habitat determination, the Service arbitrarily disavowed every recovery plan objective except the objective of securing 443,000 ac (179,274 ha), which the commenter alleged amounts to the Service's "cherry-picking" a single objective. Another commenter stated that because the Service does not know where the 443,000-acre figure stems from, the Service's reliance on it as the single objective to achieve recovery of the subpopulation is arbitrary and capricious.

Our Response: We did not disavow any specific individual objective of the 1994 recovery plan in our final critical habitat determination (77 FR 71042, November 28, 2012). We did state, however, that the objectives are outdated and need revising to reflect the current needs of the southern Selkirk Mountain subpopulation, specifically with regard to its biology and habitat. The 1994 recovery plan (which is specific to the southern Selkirk Mountain subpopulation) acknowledges that this subpopulation is limited in size and distribution. Our final critical habitat determination addresses several of the 1994 recovery plan objectives: Securing and managing at least 443,000 ac (179,274 ha) of habitat for caribou to facilitate an increase in the abundance of individuals within the subpopulation, and allowing for the expansion of the subpopulation's distribution. The best available scientific information indicates that this

expansion is most likely to occur in Canada because, as we stated in the final determination, for reasons not fully understood, the range of this subpopulation appears to have shifted northward, and, thus, the majority of habitat essential to the conservation of this subpopulation now occurs in British Columbia, Canada. Again, the 1994 recovery plan is specific to the southern Selkirk Mountain subpopulation of the southern mountain caribou DPS. Although recovery planning is beyond the scope of this listing decision, the Service will actively coordinate and participate in the development of a recovery plan with our partners within the United States (e.g., WDFW, IDFG, Tribes, and others) as well as our Canadian partners (e.g., British Columbia's Ministry of Forests, Lands, and Natural Resource Operations; Ktunaxa Nation; and others) to address recovery of the southern mountain caribou DPS.

(93) *Comment:* One commenter stated that the Service has noted that the Kinley and Apps (2007) habitat model showed that one of the largest blocks of high-priority caribou habitat in the Selkirk Ecosystem is centered on IDL property and is considered to contribute significantly to caribou habitat within the Selkirk Ecosystem. This same commenter stated that simply because a species has declined and is no longer using former habitat does not support the conclusion that the area is not essential for recovery.

Our Response: Although Kinley and Apps (2007, pp. 24–26) identified highly suitable caribou habitat throughout the Selkirk Ecosystem within the existing recovery zone within the United States, for reasons not fully understood, the individuals of the southern Selkirk Mountains subpopulation of woodland caribou continue to utilize habitat in Canada to a greater extent than would otherwise be expected. However, not designating critical habitat in certain areas does not signal that habitat outside the designated area is unimportant or may not contribute to the recovery of the species. Please see our response to *Comment (15)*.

(94) *Comment:* One commenter stated that just weeks prior to reducing the critical habitat designation, a draft of the Service's final rule indicated that even if some areas proposed for designation as critical habitat were not occupied by the species at the time of listing, "the determination that the areas being designated in this final rule are essential to the conservation of the species would still apply." The commenter also stated that peer reviewers likewise agreed that

the proposed critical habitat designation was sufficient for conservation of the species, and just suggested using the Kinley and Apps (2007) and Wakkinen and Slone (2010) habitat and corridor analyses to refine the designation.

Our Response: A draft final rule is not the final agency decision and simply reflects debate and deliberation within the Service in the course of determining what, if any areas, not occupied by the species at the time of listing were essential to the conservation of the species. Ultimately, the Service determined, as explained in the final critical habitat rule (77 FR 71042, November 28, 2012), that these areas not occupied by the species at the time of listing were not essential for the conservation of the species (see pp. 77 FR 71063–71067).

Regarding the peer reviewers' comments that the areas proposed for designation were sufficient, they suggested that we refine our proposal using Kinley and Apps (2007) and Wakkinen and Slone (2010) to better reflect newer science pertaining to caribou habitat use and movement patterns. However, the peer reviewers did not indicate that the area proposed for designation was essential to the conservation of the species; they simply indicated it was sufficient, *i.e.*, it was big enough. Stating that a certain size area is sufficient does not inform whether or not the size of the area itself is essential. In order for an area that was unoccupied by the species at the time of listing to be designated as critical habitat, it must be considered essential for the conservation of the species, not simply sufficient for their conservation. See the final critical habitat rule at pages (77 FR 71063–71067) for an in-depth analysis of why the unoccupied area was determined to be not essential for the conservation of the species.

(95) *Comment:* One commenter stated that the Service used the status of caribou habitat management and protection in Canada to justify its decision to reduce critical habitat in the United States, after-the-fact, demonstrating post hoc rationalization.

Our Response: The final critical habitat determination was based on the area in the United States that was occupied at the time of their listing under the Act in 1983, and on the fact that we determined that no other unoccupied areas in the United States were essential for caribou conservation for the reasons stated in the final rule. Refer to the final rule for a thorough discussion of this topic (see 77 FR 71063–71067, November 28, 2012). Through our longstanding coordination with Canada on efforts to recover the

southern Selkirk Mountain subpopulation, we had a general understanding that Canada was actively engaged in securing and developing management plans for caribou habitat in Canada. However, in order to conduct a thorough review during the critical habitat analysis, the Service necessarily had to clarify the nature and the status of caribou habitat protection and management within Canada, which required the Service to obtain information as detailed as possible on the status of caribou habitat management within Canada within the time constraints of the critical habitat rulemaking process. Through this improved understanding of caribou habitat management and protection in Canada, we realized that the acreage designated as critical habitat in the United States, when added to the acreage protected and managed for caribou in Canada, essentially equaled the amount of habitat recommended to be secured and enhanced in the 1994 recovery plan to support a recovered population.

(96) *Comment:* One commenter stated that the 1994 recovery plan clearly did not intend for 95 percent of the 443,000 ac (179,274 ha) of habitat protected and managed for caribou to be in Canada, noting that approximately 53 percent of the caribou recovery zone lies in the United States, and approximately 75 percent of the caribou habitat identified at that time (331,150 ac (134,011 ha) of the 443,000 ac (179,274 ha)) was within the United States.

Our Response: Although the 1994 recovery plan envisioned that more of the recovery of this subpopulation would occur within the United States, for reasons not fully understood, the range of southern Selkirk Mountain subpopulation appears to have shifted northward and caribou within this subpopulation continue to utilize habitat in Canada to a greater extent than was anticipated. As we noted in our final critical habitat determination (77 FR 71042, November 28, 2012), there was speculation in the 1980s that caribou may be abandoning the U.S. portion of their range because caribou sightings in the United States had declined since the 1970s (Scott and Servheen 1984, p. 16; 1985, p. 27). Although much of the area identified by the 1994 recovery plan as occurring in the United States is federally managed by the USFS for this subpopulation of caribou and contains one or more of the PBFs of critical habitat, individuals of this subpopulation continue to make greater use of habitat in Canada than would be predicted (based on available habitat in the United States as identified

in the Kinley and Apps (2007) modeling study). Thus, as we stated in our final critical habitat determination, we no longer find the extensive areas initially identified for the recovery of this subpopulation within the United States to be essential to the conservation of the species. Rather, the best scientific information available indicates that vast majority of essential habitat for this subpopulation now occurs in Canada. This information will be used to inform the recovery planning process with our partners for the southern mountain caribou DPS, which is outside the scope of this listing process.

(97) *Comment*: One commenter stated that habitat protections for caribou in Canada do not negate the need for critical habitat designation in the United States, because habitat protections in Canada are not the functional equivalent of critical habitat designation in the United States.

Our Response: After review of the best available science, we determined that 30,010 ac (12,145 ha) of habitat in the United States meet the definition of critical habitat for caribou, and that these designated acres of critical habitat in the United States will contribute to the conservation of the species. See our November 28, 2012, final rule designating critical habitat (77 FR 71042) for more information.

(98) *Comment*: One commenter stated that the Service did not indicate in the final critical habitat rule how much, if any, of the Crown Lands (282,515 ac (114,330 ha)) or Nature Conservancy lands (135,908 ac (55,000 ha)) protected in Canada contain the primary constituent elements essential for recovery, and did not assess threats related to roads, human access, or predation within those lands. The commenter stated that, because the Canadian lands are not subject to the Act's section 7 requirements and are not the functional equivalent of critical habitat, the Service cannot rely on the Canadian lands for conservation of caribou. The commenter also stated that Canadian biologists indicate that status quo management will lead to a continuing decline of mountain caribou, and that successful recovery of southern caribou populations may require greater efforts. The commenter also offered the following direct quote from the Service's 5-year review: "as the southernmost mountain caribou population and the last remaining population within the [United States], the South Selkirk population takes on added significance in maintaining the shrinking range of mountain caribou, which has already decreased 60 percent from the historical range. Further range

contraction, combined with decreasing population numbers, could have serious implications to the conservation of mountain caribou." The commenter asserted that the above-referenced Canadian biologists' concerns, when coupled with the quoted statement from the Service's 5-year review, undermine the Service's reliance on the management of lands in Canada as contributing towards the successful recovery of caribou.

Our Response: Because our ability to designate critical habitat is restricted to lands within the jurisdiction of the United States, our final designation constitutes all lands within the United States that meet the statutory definition of critical habitat for the southern mountain caribou DPS (see our response to *Comment (15)*). While we did not complete an in-depth, quantitative analysis (e.g., species composition, age structure, etc.) of the Crown or Nature Conservancy lands protected and managed for caribou in Canada, we generally understood that almost all of the protected lands were identified as priority 1, 2, and 3 caribou habitats through the habitat suitability modeling completed by Kinley and Apps (2007, p. 25) that entailed assessing the area's ecological attributes including lichen availability, forest structure and composition, topography, connectivity between habitat patches, etc. In fact, most of the priority 1 habitats identified by Kinley and Apps (2007, p. 25) are located in Canada on the protected Crown and Nature Conservancy lands. Thus, as these lands were identified as priority 1, 2, and 3 habitats for caribou, we concluded they provided the functional equivalents to the PBFs of caribou critical habitat we identified as essential to the conservation of the species. Additionally, as we have previously stated, the range of the southern Selkirk Mountain subpopulation appears to have shifted northward, and the vast majority of essential habitat for this subpopulation now occurs in Canada. Therefore, it is entirely appropriate for the Service to consider these lands protected and managed in Canada for caribou as contributing significantly to caribou conservation. Further, the management of these lands in Canada, together with management of caribou habitat in the United States (including those acres designated as critical habitat in the United States), will inform the development of a recovery plan for this DPS, which is outside the scope of this listing decision.

(99) *Comment*: One commenter stated that there is no support in the record to show that management of Canadian

lands plus the small amount of designated critical habitat in the United States is sufficient to recover the southern Selkirk Mountains caribou subpopulation, and because the Service does not know where the 443,000-ac figure stems from, the Service's reliance on it as the single objective to achieve recovery of the subpopulation is arbitrary and capricious.

Our Response: While recovery planning is beyond the scope of the critical habitat rulemaking process, the Service is not relying on designation of critical habitat as the single means to achieve recovery of the southern Selkirk Mountains subpopulation. We reiterate that addressing threats of predation, habitat fragmentation and loss, and human recreation are necessary to achieve conservation and recovery of this subpopulation. Objectives addressing these threats, among others, will be developed with our partners during recovery planning for the southern mountain caribou DPS.

(100) *Comment*: One commenter stated that the amount of designated critical habitat should be increased to compensate for the potential effects of climate change that could result in increased intensity of future fires that may result in loss of habitat.

Our Response: We acknowledge that climate change could change the suitability of habitat for the southern Selkirk Mountains subpopulation of woodland caribou in the future. However, we are required to designate critical habitat based upon the best available scientific data at the time that we finalize the designation. The information currently available on the effects of global climate change does not provide precise estimates of the location and magnitude of the potential effects. We are also not currently aware of any climate change information that would help identify specific areas that might become important to the southern Selkirk Mountains subpopulation of woodland caribou in the future. Therefore, as explained in the proposed rule to designate critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou (76 FR 74018, November 30, 2011, see p. 76 FR 74024), we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat for this species to address the effects of climate change. We also find that the best scientific information available suggests that the range of the southern Selkirk Mountains subpopulation of woodland caribou has largely shifted northward, and the vast majority of essential habitat for this population of woodland caribou now

occurs within Canada. Critical habitat can be revised under section 4(a)(3)(A)(ii) of the Act as appropriate, as additional scientific data on climate change or other significant information becomes available.

(101) Comment: One commenter stated that the Service must seek additional peer review of the final designation of 30,010 ac (12,145 ha) of critical habitat because the final designation is a drastic departure from the Service's proposal to designate 375,562 ac (151,985 ha), upon which the Service solicited peer review.

Our Response: The Service solicited expert opinions on the proposed critical habitat rule from four individuals with scientific expertise on the woodland caribou; we received responses from all four peer reviewers. One of the peer reviewers commented that the proposed rule was very thorough and accurate, but the reviewer did not submit any additional comments. The other three peer reviewers who provided substantive comments indicated that the area proposed for designation as critical habitat in the proposed rule was far greater than the area actually used by caribou. The peer reviewers stated that "the major flaw" in the proposed rule was designating far too many of these unused acres as meeting the definition of critical habitat. The final designation of critical habitat (77 FR 71042, November 28, 2012) reflects the concerns expressed by the peer reviewers and is a logical outgrowth of their comments. Therefore, the Service is not required to seek additional peer review of the final critical habitat designation.

(102) Comment: One commenter stated the final critical habitat designation is unlawful because it is not a logical outgrowth of the best available science and because the designation failed to include unoccupied habitats that are essential to the recovery of this dwindling population.

Our Response: In the November 28, 2012, final critical habitat determination (77 FR 71042), which the Service proposed to reaffirm in our May 8, 2014, proposal to amend the listing of the southern mountain caribou DPS (79 FR 26504), the Service based our final designation of critical habitat for the southern Selkirk Mountains subpopulation of woodland caribou on the best available scientific information. See our response to *Comment (101)*. Additionally, several other comments received from State agencies, Tribes, and others agreed with peer reviewers that the proposed rule was overly expansive. The final designation of critical habitat, therefore, was informed

by and is a logical outgrowth of the comments provided by the peer reviewers, Federal and State agencies, Tribes, and other organizations and individuals. Finally, see our responses to *Comments (78)* and *(89)* for a discussion of the rationale on which we based the final critical habitat determination.

(103) Comment: One commenter stated that critical habitat designation must be revised to correspond with the entirety of the existing caribou recovery zone within the United States.

Our Response: See our response to *Comment (15)*.

Determination

Introduction

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we determine whether a species is an endangered species or threatened species because of any one or a combination of the following: (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination. These five factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

The Act defines "endangered species" as any species that is "in danger of extinction throughout all or a significant portion of its range" (16 U.S.C. 1532(6)) 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" (16 U.S.C. 1532(20)). The definition of "species" is also relevant to this discussion. On July 1, 2014, we published a final policy interpreting the phrase "significant portion of its range" (SPR) (79 FR 37578). In our policy, we interpret the phrase "significant portion of its range" in the Act's definitions of "endangered species" and "threatened species" to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in

danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, the species, is an "endangered species." The same analysis applies to "threatened species." The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations.

Determination of Status Throughout All of Its Range

We proposed to list the southern mountain caribou DPS as threatened in our May 8, 2014, proposed rule (79 FR 26504). However, based on new information received since the proposed rule and as described previously in this rule, we now conclude that the status of and threats to this DPS warrant listing it as an endangered species.

The current abundance and number of caribou subpopulations within the DPS are limited to an estimated 1,356 individuals in 15 extant subpopulations (COSEWIC 2014, p. xviii). The population is declining, and based on population estimates over generations, it appears that the population rate of decline is accelerating (see below). Additionally, while it is difficult to establish a precise historical distribution of woodland caribou (including the distribution of the southern mountain subpopulation of woodland caribou), according to COSEWIC (2014, p. 14), mountain caribou were much more widely distributed than they are today, and based on this information, the range of this DPS is decreasing.

As previously discussed under Summary of Factors Affecting the Species, significant threats to the southern mountain caribou DPS include increased levels of predation due to changes in the predator/prey dynamics (factor C); increased human access into caribou habitat, resulting in disturbance of caribou from use of roads and off-road vehicles (factor B); and climate change (factor A). All of these threats are linked with continuing habitat alteration (factor A) and occur throughout the entire range of the DPS. These threats are not adequately ameliorated by existing regulatory mechanisms (factor D). Through this evaluation, we have determined that these factors pose significant threats to the continued existence of the southern mountain caribou DPS. These threats are expected to continue in the foreseeable future.

As described above, under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or throughout a significant portion of its range. The Act defines “species” as follows: “The term ‘species’ includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature” (16 U.S.C. 1532(16)). As implemented by the Service, to be currently on the brink of extinction in the wild does not necessarily mean that extinction is certain or inevitable. Ultimately, whether a species is currently on the brink of extinction in the wild (including the timing of the extinction event itself) depends on the life history and ecology of the species, the nature of the threats, and the species’ response to those threats (USFWS 2010, *in litt.*).

We have carefully evaluated the best scientific and commercial data available regarding the past, present, and future threats to the southern mountain caribou DPS. As described above in this rule, the southern mountain caribou DPS has a limited distribution that has suffered ongoing major reductions of its numbers and range as a result of threats that have not been abated. These declines have resulted in further isolation of subpopulations that make up this DPS.

For the reasons outlined above in the final rule and as briefly summarized here, we have determined that the southern mountain caribou DPS meets the definition of an endangered species because it is in danger of extinction throughout all of its range.

1. The species’ response to ongoing threats has resulted in further declines in subpopulation abundance. All 15 extant subpopulations consist of fewer than 400 individuals each, 13 of which have fewer than 250, and 9 of which have fewer than 50 (COSEWIC 2014, p. xviii). Fourteen of the 15 extant subpopulations within this DPS have declined since the last assessment by COSEWIC in 2002 (COSEWIC 2014, p. vii). Based on COSEWIC’s 2014 report (p. vii), which is new information received after we published our proposed amended listing rule (79 FR 26504, May 8, 2014), the rate of the population decline is accelerating. The accelerated rate of population decline is supported by Wittmer *et al.* (2005b, p. 265), who studied rates and causes of southern mountain caribou population declines from 1984 to 2002, and found an increasing rate of decline. Wittmer *et al.* (2005b, p. 264) also found that

predation was the primary cause of mortality driving the accelerated rate of population decline of mountain caribou.

2. A PVA conducted by Hatter (2006, p. 7, *in litt.*) predicted a high likelihood of quasi-extinction for 12 of the 15 subpopulations and a lower likelihood of quasi-extinction for one additional subpopulation within this DPS within 20 to 90 years. Thus, a total of 13 of the 15 subpopulations could be quasi-extinct within 90 years. Wittmer *et al.* (2010, p. 86) also conducted a PVA on 10 of the same subpopulations assessed by Hatter (2006, entire, *in litt.*), and predicted extinction of all 10 subpopulations within 200 years.

3. Given the likelihood of extirpation of 13 of 15 subpopulations within 20 to 90 years, the entire DPS is at risk of extinction due to lack of redundancy (ability of the species to withstand catastrophic events) and resiliency (ability of the populations to withstand stochastic events) of the remaining 2 subpopulations whose status’ are likely to be negatively affected by existing demographic and/or environmental stochastic threats. Mountain caribou are susceptible to avalanches, have low reproductive rates, and have high calf mortality. Low reproductive rates and high calf mortality reduce the resiliency of the subpopulation. Therefore, the decreased redundancy and reduced resiliency of the southern mountain caribou DPS places it at greater risk of extinction sooner than 200 years (as predicted by Wittmer 2010, entire) due to existing demographic and environmental stochastic threats.

4. Further exacerbating the decline and potential extirpation of mountain caribou subpopulations is that mountain caribou appear to lack the inherent behavior to disperse long distances (van Oort *et al.* 2011, pp. 215, 221–222). Species whose historical distribution was more widely and evenly distributed (such as mountain caribou) (van Oort *et al.* 2011, p. 221) that have been fragmented into subpopulations via habitat fragmentation and loss may appear to exist in a metapopulation structure when in fact, because they may not have evolved the innate behavior to disperse among subpopulations, their fragmented distribution may actually represent a geographic pattern of extinction (van Oort *et al.* 2011, p. 215).

5. The three largest subpopulations are declining, contain fewer than 400 individuals each (COSEWIC 2014, p. 41), are isolated from other subpopulations (van Oort *et al.* 2011, pp. 221–222; Wittmer *et al.* 2005b, p. 414), and are becoming increasingly more so due to habitat fragmentation

and human activities (Serrouya *et al.* 2013, p. 2,597; van Oort *et al.* 2011, p. 222). They are also subject to the same type and level of threats acting on the DPS as a whole that have not been abated, and which have resulted in the recent extirpation of two subpopulations.

6. As explained previously, habitat alterations (increased distribution and quantity of early successional habitats) have increased predation of southern mountain caribou, particularly by wolves and mountain lions. Predation is thought to be the principal and proximate factor driving their recent decline. It will likely require greater than 150 years (greater than 16 generations of caribou) of habitat protections for these early successional and fragmented forests to develop the old-growth habitat characteristics (vegetative structure and composition) (Stevenson *et al.* 2001, p. 1) that would begin to restore the natural predator-prey balance of these high-elevation, old-growth forests, and thus reduce predation pressure on caribou. As discussed above, Hatter (2006, p. 7, *in litt.*) predicted quasi-extinction of 13 of the 15 subpopulations within the DPS within 20 to 90 years, and Wittmer *et al.* (2010, p. 86) predicted extinction of 10 of the 15 populations within 200 years (notably, they did not assess 5 of the populations). Thus, the subpopulations within the DPS are not likely sustainable given ongoing declines and the length of time needed to improve habitat conditions that may ameliorate the threat of predation.

In summary, all 15 extant subpopulations consist of fewer than 400 individuals each: 2 subpopulations have greater than 300 individuals; 4 subpopulations have between 50 and 210 individuals each; and 9 subpopulations each have fewer than 50 individuals. Based on updated trend data (COSEWIC 2014, p. xviii), the rate of population decline of each subpopulation appears to be accelerating. A recent PVA indicates that there is a likelihood of 13 of 15 subpopulations becoming quasi-extinct in 20 to 90 years, which is likely to lead rapidly to their extirpation. The extirpation of these subpopulations would leave only two subpopulations (Hart Ranges and North Caribou Mountains) located adjacent to one another at the extreme northern edge of the DPS’s range, an over 65 percent reduction of current range. Both of these subpopulations are declining, and the rate of decline appears to be accelerating. The high likelihood of only two adjacent subpopulations remaining at the extreme northern edge of the

DPS's range leaves the DPS without sufficient redundancy to withstand existing demographic and/or environmental stochastic threats and severely reduces representation of the population within its range. Additionally, declining and small subpopulation sizes, low reproductive rates, and high calf mortality reduces the resiliency of this DPS to withstand these same threats. Severely reduced redundancy, resiliency, and representation greatly increase the risk of extinction of the entire DPS. In conclusion, we have determined that the southern mountain caribou DPS meets the definition of an endangered species because it is in danger of extinction throughout all of its range.

Determination of Status Throughout a Significant Portion of Its Range

Because we found that the species is an endangered species because of its status throughout all of its range, we do not need to conduct an analysis of its status in any portions of its range. This is consistent with the Act because the species is currently in danger of extinction throughout all of its range due to high-magnitude threats across its range, or threats that are so high in particular areas that they severely affect the species across its range. Therefore, the species is in danger of extinction throughout every portion of its range, and an analysis of whether the species is in danger of extinction or likely to become so throughout any significant portion of its range would be redundant and unnecessary. See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578, July 1, 2014).

Determination of Status

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the southern mountain caribou DPS. Because the species is in danger of extinction throughout all of its range, the species meets the definition of an endangered species. Therefore, on the basis of the best scientific and commercial data available and per our DPS policy, we amend the current listing of the endangered southern Selkirk Mountains population of woodland caribou, as identified at 50 CFR 17.11(h), to reflect the southern mountain caribou DPS as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through the listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

A Selkirk Mountain Caribou Management Plan/Recovery Plan was approved by the Service in 1985 (USFWS 1985), and a revised recovery plan for woodland caribou in the Selkirk Mountains was approved by the Service in 1994 (USFWS 1994a). An update regarding the status of this recovery plan can be found in the latest 5-year status review for the species (USFWS 2008, entire). While actions have been carried out in an attempt to recover this subpopulation, the recovery criteria in the 1994 recovery plan were determined to be inadequate (USFWS 2008, p. 15). In addition, this recovery plan only applies to this one subpopulation, and does not extend to the entire southern mountain caribou DPS. Consistent with this final rule, revisions to the existing plan, in coordination with British Columbia, Canada, will be required to address the entire DPS and the continuing or new threats to the DPS. A new recovery plan for this DPS would identify site-specific management actions that set a trigger for review of the five factors that determine whether the listed entity remains

endangered or threatened or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Development of a recovery plan for the southern mountain caribou DPS will be coordinated with species experts from Canada, Tribes, and the United States. When completed, the draft recovery plan and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions may include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Idaho and Washington will be eligible for Federal funds to implement management actions that promote the protection or recovery of the southern mountain caribou DPS. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is

listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require consultation as described in the preceding paragraph include, but may not be limited to: Management and any other landscape-altering activities on Federal lands administered by the USFS and Bureau of Land Management, issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers, construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission, and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 50 CFR 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species

is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

1. Introduction of nonnative species that compete with or prey upon individuals of the southern mountain caribou DPS; and

2. Unauthorized modification of the old growth, coniferous forest landscape within the southern mountain caribou DPS.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act due to the variety and nature of activities that may occur within caribou habitat across the range of the DPS. Depending on the implementation timing, intensity, and duration of such activities, it is likely that site-specific conservation measures may be needed for specific activities that may directly or indirectly affect the species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the 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 address the comments we received from Tribes on our May 8, 2014, proposed amended listing rule (79 FR 26504) under *Comments from Native American Tribes*, above. We had several informal technical discussions and meetings with both the Kalispel Tribe of Indians and the Kootenai Tribe of Idaho during 2014–2017. We had one formal government-to-government meeting with the Kootenai Tribe on May 22, 2014, as well as two recent meetings with the Tribe on January 12 and March 22, 2017, to discuss recovery planning, which included some discussion of the listing.

References Cited

A complete list of all references cited in this rule is available on the internet at <http://www.regulations.gov> or upon request from the State Supervisor, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for “Caribou, woodland [Southern Selkirk Mountains DPS]” under MAMMALS in the List of Endangered

and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

* * * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	*
Caribou, woodland [Southern Mountain DPS].	<i>Rangifer tarandus caribou</i> .	U.S.A. (wherever found), Canada (southeastern British Columbia).	E	48 FR 1722, 1/14/1983; 48 FR 49245, 10/25/1983; 49 FR 7390, 2/29/1984; 83 FR [Insert Federal Register page where the document begins], [Insert date of publication in the Federal Register]; 50 CFR 17.95(a). ^{CH}
*	*	*	*	*

■ 3. In § 17.95(a), amend the entry for “Woodland Caribou (*Rangifer tarandus caribou*) Southern Selkirk Mountains Population” by:

- a. Revising the heading;
- b. Revising the introductory text of paragraph (a)(2);
- c. Revising paragraph (a)(2)(iv); and
- d. Revising paragraph (a)(5).

The revisions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals*.

* * * * *

Woodland Caribou (*Rangifer tarandus caribou*), Southern Mountain Distinct Population Segment (DPS)

* * * * *

(2) Within this area, the primary constituent elements of the physical and biological features essential to the conservation of the southern mountain caribou DPS consist of five components:

* * *

* * * * *

(iv) High-elevation benches and shallow slopes, secondary stream bottoms, riparian areas, seeps, and

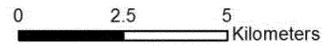
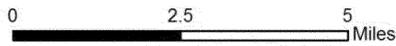
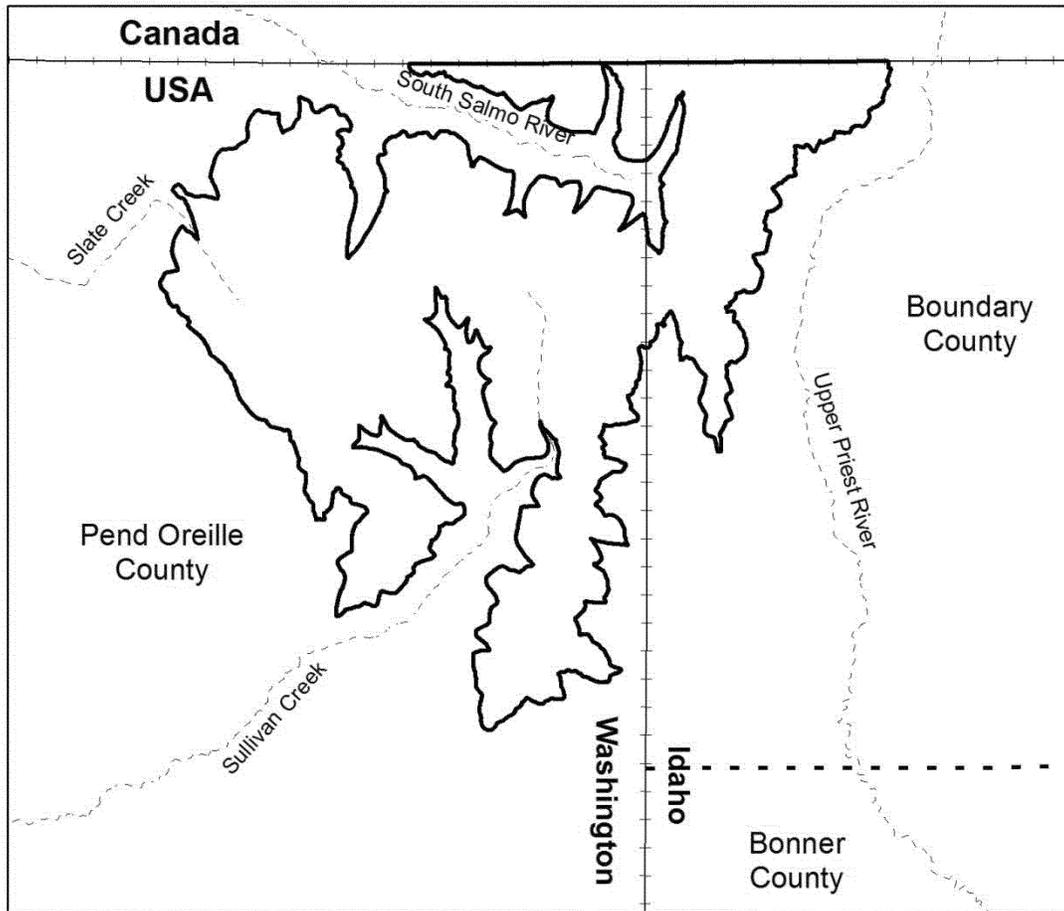
subalpine meadows with succulent forbs and grasses, flowering plants, horsetails, willow, huckleberry, dwarf birch, sedges, and lichens. The southern mountain caribou DPS, including pregnant females, uses these areas for feeding during the spring and summer seasons.

* * * * *

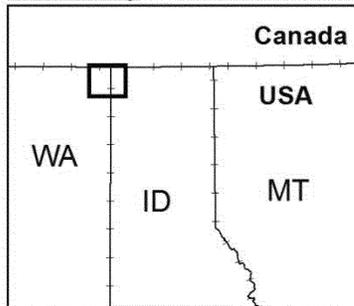
(5) Unit 1: Boundary County, Idaho, and Pend Oreille County, Washington. The map of the critical habitat unit follows:

BILLING CODE 4333-15-P

**Critical Habitat for *Rangifer tarandus caribou*
Southern Mountain Caribou Distinct Population Segment**



Locator Map



Legend

- Southern Mountain Caribou DPS Critical Habitat
- National/State Boundary
- County Boundary
- Major Rivers

* * * * *

Dated: September 17, 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. 2019-20459 Filed 10-1-19; 8:45 am]
BILLING CODE 4333-15-C



FEDERAL REGISTER

Vol. 84

Wednesday,

No. 191

October 2, 2019

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 580

Odometer Disclosure Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 580**

[Docket No. NHTSA–2019–0089]

RIN 2127–AL39

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule is issued to fulfill a requirement in the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP–21) that NHTSA establish regulations permitting states to adopt schemes that allow electronic odometer disclosure statements in conjunction with electronic titling systems associated with the transfer of interests in motor vehicles. Amendments in this final rule allow odometer disclosures in an electronic medium while maintaining and protecting the existing system(s) ensuring accurate odometer disclosures and aid law enforcement in prosecuting odometer fraud. To accomplish this goal, the final rule amends prior regulations governing transactions made on paper titles and similar documents allowing odometer disclosures to be made in a purely electronic environment or through using paper documents that are scanned and converted into electronic form and stored in a state data system. This final rule also adds new sections containing specific additional requirements only applying to electronic disclosures to ensure the secure creation and maintenance of electronic records. NHTSA is also amending the mileage disclosure exemption to vehicles that are 20 years old or older.

DATES:

Effective date: This rule is effective December 31, 2019.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than November 18, 2019.

Incorporation by Reference: The incorporation by reference of certain publications listed in the standard is approved by the Director of the Federal Register as of December 31, 2019.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety

Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For policy and technical issues: Mr. David Sparks, Director, Office of Odometer Fraud, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–5953. Email: *David.Sparks@dot.gov*.

For legal issues: Mr. Thomas Healy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–7161.

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I. Executive Summary*A. Summary of Requirements of the Final Rule*

On Friday, March 25, 2016, NHTSA published a notice of proposed rulemaking (NPRM) specifying potential amendments to part 580 allowing states and other jurisdictions to establish electronic odometer disclosure schemes allowing odometer disclosures required by the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) to be made electronically (81 FR 16107). The odometer disclosure laws and regulations protect purchasers of motor vehicles from odometer fraud. See Public Law 92–513, 86 Stat. 947, 961–63 (1972).

The NPRM discussed the Moving Ahead for Progress in the 21st Century Act of 2012’s (MAP–21, or Pub. L. 112–141) direction that NHTSA promulgate regulations permitting written odometer disclosures and statements to be made electronically. To provide background and context for the proposed rules, the NPRM examined the history and development of existing odometer statutes and regulations from their inception in the Cost Savings Act of 1972 (Pub. L. 92–513, 86 Stat. 947, 961–63 (1972)) through the Truth in Mileage Act (TIMA) and subsequent amendments.¹ The NPRM also noted that § 24111 of the Fixing America’s Surface Transportation Act of 2015 (FAST Act, or Pub. L. 114–94), allows states to adopt electronic odometer disclosure systems without prior approval of the Secretary (“the Secretary”) of the Department of Transportation until the effective date of the final rule addressed by this notice. *Id.*

The salient provisions of the odometer disclosure regulations, 49 CFR 580.5, 580.7 and 580.13, were described in the NPRM, including the requirement that odometer disclosures must be made on the title (Section 580.5(c)), the attestation made when executing the

¹ Public Law 100–561 sec. 40, 102 Stat. 2805, 2817 (1988) added Section 408(d)(2)(C) allowing use of secure power of attorney. In 1990, Congress amended section 408(d)(2)(C) of the Cost Savings Act. The amendment addressed retention of powers of attorneys by states and provided that the rule adopted by the Secretary not require a vehicle be titled in the state in which the power of attorney was issued. See Public Law 101–641 sec. 7(a), 104 Stat. 4654, 4657 (1990). The Cost Savings Act, as amended by TIMA, was repealed in 1994 and reenacted and recodified without substantive change. Public Law 103–272, 108 Stat. 745, 1048–1056, 1379, 1387 (1994).

disclosure (§ 580.5(e)), as well as security features incorporated into titles and other documents to guard against tampering and counterfeiting (Section 580.4). Recordkeeping requirements, which are critical for effective detection and prosecution of odometer fraud, were also addressed. As the NPRM proposed modifying exemptions from disclosure in § 580.17, the existing provisions of this section were also described.

Because of their instructive value, the NPRM examined the petition process by which states may seek approval of alternative odometer disclosure schemes (§ 580.11) and petitions from Virginia, Wisconsin, Florida, New York, and Texas seeking approval of electronic disclosure systems. The NPRM observed such systems must minimize or eliminate disclosures made on paper, provide adequate means for verifying identities, link or merge disclosures with the record title, and preclude duplicate electronic and paper titles. Additionally, the NPRM stated electronic odometer disclosure systems must meet special conditions involved in vehicle leasing, provide for adequate recordkeeping and record retrieval, and accommodate interstate transactions between electronic and paper title jurisdictions.

The NPRM observed the purpose of the odometer disclosure provisions of the Cost Savings Act, as amended, is to protect consumers by ensuring they receive valid representations of a vehicle's actual mileage at the time of transfer. The Agency noted an additional purpose of creating a system of records and a paper trail to facilitate detection and prosecution of odometer fraud. Proposals set forth in the NPRM sought to preserve these attributes while allowing jurisdictions maximum flexibility in developing and deploying electronic titling and odometer disclosure schemes. The NPRM proposed changing part 580 to recognize physical and electronic documents by amending § 580.1 to add the option of electronic disclosures; § 580.3 to add new definitions and amend existing definitions to accommodate physical and electronic filings; § 580.4 to clarify separate requirements for the security of physical disclosures and electronic disclosures; § 580.5 to clarify methods of disclosure for physical and electronic systems; § 580.7 to add provisions allowing for the option of electronic disclosures for leased motor vehicles; § 580.8 to include electronic copies among forms of disclosures that must be retained and general requirements for that retention; §§ 580.13 and 580.14 to allow use of a power of attorney to

address interstate transfers and added a new § 580.6 (previously reserved), which would contain unique requirements for electronic odometer disclosures. Other amendments proposed in the NPRM sought to correct a typographical error, update NHTSA's address, strike obsolete text in § 580.12 and extend the disclosure exemption in § 580.17 from 10 years to 25 years.

After careful consideration of all available information, including public comments submitted in response to the NPRM, the agency decided to adopt amendments proposed by the NPRM for §§ 580.1, 580.10, 580.11 and 580.12 without substantive change. Remaining amendments in this final rule differ from proposals in the NPRM. Some of these changes are minor. For example, the final rule replaces the word "his" with "their" and makes other modifications for gender neutrality. Similarly, to enhance clarity, the final rule establishes as definition of "jurisdiction" that encompasses states and territories and replaces "state" wherever formerly used in part 580 with "jurisdiction." This final rule also adopts additional amendments to enhance clarity and accuracy. Section 580.2 is amended to better describe the status of a vehicle upon termination of a lease, and the term "purchasers" has been replaced with the more accurate and less restrictive term "transferees." Consistent with the former amendment, the term "dealer" in § 508.13(g) has been changed to "transferee" to reflect that those receiving ownership may include persons or entities who are not dealers.

This final rule also implements significant changes to proposals contained in the NPRM. Broad definitions of physical documents and electronic documents NHTSA proposed have been discarded. Commenters rightly observed these proposed definitions were not apt. The final rule therefore contains new definitions for "Access," "Electronic Power of Attorney," "Electronic Title," "Jurisdiction," and "Printed Name," and revises "Original Power of Attorney," "Sign or Signature," and "Transferor." These more precise definitions are applied throughout part 580 to facilitate transactions with physical and electronic titles and powers of attorney. In contrast to the NPRM, which did not provide for an electronic power of attorney but allowed electronic reassignments, this final rule authorizes both under certain circumstances. The definition of "Sign or Signature" has been modified from our earlier proposal in that requirements for an electronic signature require a

National Institute of Standards (NIST) level 2 authentication system rather than NIST Level 3. The final rule's requirements for electronic titles and electronic powers of attorney also diverge from the NPRM in allowing authorized modifications to electronic records. In addition, the final rule more clearly recognizes electronic titles and odometer disclosures may take many forms, from scanned copies of paper documents to database entries. Recognizing technologies such as "pen pads" may be used in electronic titling and odometer disclosure systems and paper documents may, in some jurisdictions, be employed in an electronic odometer disclosure system, the final rule removes the NPRM's proposal to delete printed names from electronic transactions. The final rule also modifies requirements for scanning documents to allow document conversion in black and white at a resolution of 200 dot per inch (dpi). Recordkeeping requirements of §§ 580.8 and 580.9 are changed from our earlier proposal to allow more options for transferees and to streamline the proposed rules for auctions. NHTSA has now adopted provisions allowing electronic and paper powers of attorney when a title is unavailable to a transferor because the title is lost, physically held by a lienholder, electronically controlled by a lienholder, or when an electronic title is inaccessible. Our NPRM also proposed changing the exemption from mileage disclosure in § 580.17 for cars 10 years old or older to 25 years old or older. The final rule adopts an exemption for cars 20 years old or older and explicitly sets out how this modified exemption will be applied.

B. Costs and Benefits

As discussed in Section V of this notice, the agency only performed a detailed cost benefit analysis for the exemption amendments of this final rule. With the exception changing the exemption from mileage disclosure from 10 to 20 years this final rule imposes no mandatory requirements. Amendments to part 580 simply allow jurisdictions the option of adopting electronic title and odometer disclosure systems without seeking prior approval from NHTSA. To the extent provisions in this final rule may affect existing electronic title and odometer disclosure systems in the small number of jurisdictions with such schemes, the agency believes provisions of this final rule are sufficiently flexible requiring little or no change. Since the FAST Act's temporary suspension of the requirement that states must petition NHTSA for

approval of alternative electronic odometer disclosure schemes ends on the effective date of this final rule, states seeking to adopt such schemes after that date must either comply with the provisions of this final rule or petition the agency for approval of alternative procedures.

To the limited extent this final rule impacts states and other jurisdictions with electronic titles systems, the agency believes that there is the potential for significant cost savings to be realized through issuance of this final rule. These savings would first be manifested through avoidance of legal and administrative costs to prepare and submit petitions to NHTSA seeking approval of electronic title systems. Moreover, by establishing uniform rules for electronic title systems, this final rule facilitates adoption of electronic disclosures and titles and the use of these mechanisms in vehicle transactions. Currently, NHTSA estimates that there are at least 40 million odometer disclosures made every year in the United States. Since the agency believes that electronic disclosure will be less costly than paper disclosures, even a minor cost savings per disclosure could lead to large societal savings. However, the agency does not have any data on the extent to which this rule will incentivize their existing practices. Certainly, this rule will make it far easier to adopt electronic disclosures as states will no longer need to petition NHTSA if the requirements of this final rule are met. It is reasonable, then, to expect that more states will adopt this practice, but the agency does not now have sufficient data to determine how this general expectation will translate into quantifiable cost savings.

The final rule's modification of the vehicle age-based exemption from odometer disclosure will impose costs and produce benefits. The total cost of the change to the exemption in this final rule is estimated to be from the minimum of \$0.7 million in 2020 to the maximum of \$5.4 million in 2029 and later. If the rule can deter 5 percent of rollbacks from affected vehicles the rule would eliminate \$1.5 million in annual consumer losses in 2020 and \$7.5 million in such losses from 2029 forward.

II. Background and Summary of Final Rule

A. MAP-21

This document is being issued pursuant to the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21, or Pub. L. 112-141), which

amended Section 32705 of Title 49, United States Code. The amendments required the Secretary to prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically not later than 18 months after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012. Section 31205, 126 Stat. 761 (2012).

B. FAST Act Amendments

Section 24111 of the Fixing America's Surface Transportation Act of 2015 (FAST Act, or Pub. L. 114-94), signed into law December 4, 2015, allows states to adopt electronic odometer disclosure systems without prior approval of the Secretary. Any such system must comply with applicable state and federal laws regarding electronic signatures under 15 U.S.C. 7001 *et seq.*, meet requirements of 49 U.S.C. 32705 and provide for "appropriate authentication and security measures," Public Law 114-94 section 24111. States may only adopt electronic odometer systems without prior approval of the Secretary until the effective date of rules proposed in this notice. *Id.*

In providing states with the opportunity to implement electronic odometer disclosure systems until the effective date of this final rule, FAST Act amendments do not alter existing statutory odometer disclosure requirements or their intent. Effective odometer disclosure systems are essential to protecting consumers from odometer fraud and must reduce or eliminate opportunities for such fraud to the greatest practicable extent. Federal and state governments have an interest in preventing such fraud.

This final rule and NHTSA's prior responses to state petitions for approval of alternative disclosure schemes (discussed below) contain guidance on potential strengths and weaknesses of electronic odometer disclosure schemes.

C. The Cost Savings Act, the Truth in Mileage Act and Subsequent Amendments

1. The Cost Savings Act

In 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) to, among other things, protect purchasers of motor vehicles from odometer fraud. *See* Public Law 92-513, 86 Stat. 947, 961-63 (1972).

To assist purchasers in knowing the true mileage of a motor vehicle, Section 408 of the Cost Savings Act required the transferor of a motor vehicle to provide written disclosure to the transferee at

the time of the transfer of ownership of the vehicle. *See* Public Law 92-513, 408, 86 Stat. 947 (1972). Section 408 required the Secretary to issue rules requiring the transferor to provide a written disclosure to the transferee in connection with the transfer of the vehicle. 86 Stat. 962-63. The written disclosure was to include the cumulative mileage registered on the odometer, or disclose the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has traveled. The rules were to prescribe the way information is disclosed under this section and in which such information is retained. *Id.* Section 408 further stated if any transferor violated any rules under this section or knowingly gave a false statement to a transferee in making any disclosure required by such rules is a violation. *Id.* The Cost Savings Act also prohibited disconnecting, resetting, or altering motor vehicle odometers. *Id.* The statute subjected violators to civil and criminal penalties and provided for federal injunctive relief, state enforcement, and a private right of action.

Despite these protections, there were shortcomings in odometer provisions of the Cost Savings Act. In some states, the odometer disclosure statement was not on the title; instead, it was a separate document that could easily be altered or discarded and did not travel with the title. Titles were not on tamper-proof paper, and mileage disclosures could be easily altered. Problems were compounded by title washing through jurisdictions with ineffective controls. In addition, there were considerable misstatements of mileage on vehicles that had formerly been leased vehicles, as well as on used vehicles sold at wholesale auctions.

2. The Truth in Mileage Act

In 1986, Congress enacted the Truth in Mileage Act (TIMA), which added provisions to odometer provisions of the Cost Savings Act. *See* Public Law 99-579, 100 Stat. 3309 (1986). TIMA amendments expanded and strengthened Section 408 of the Cost Savings Act.

Among other requirements, TIMA precluded the licensing of vehicles unless several requirements were met by the transferee and transferor. Titles must be printed by a secure printing process or other secure process and must indicate the mileage and contain space for the transferee to disclose the mileage in a subsequent transfer. The transferee, when applying for a title, is required to provide the transferor's (seller's) title, and if that title contains a space for the

transferor to disclose the vehicle's mileage, that information must be included, and the statement must be signed and dated by the transferor.

As to lease vehicles, TIMA stated NHTSA must publish rules requiring the lessor of vehicles to advise its lessee(s) that the lessee is required by law to disclose the vehicle's mileage to the lessor upon the lessor's transfer of ownership of the vehicle. Additionally, TIMA required auction companies establish and maintain records on vehicles sold at the auction, including the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auction took possession of the vehicle.

As amended by TIMA, section 408(f) (1) of the Cost Savings Act provided its provisions on mileage statements for licensing of vehicles (and rules involving leased vehicles) apply in a state, unless the state has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. Section 408(f)(2) stated "[t]he Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be."

3. Amendments Following the Truth in Mileage Act and the 1994 Recodification of the Cost Savings Act

In 1988, Congress amended section 408(d) of the Cost Savings Act to permit the use of a secure power of attorney in circumstances where the title was held by a lienholder. The Secretary was required to publish a rule to implement the provision. See Public Law 100-561 § 40, 102 Stat. 2805, 2817 (1988), which added § 408(d)(2)(C). In 1990, Congress amended § 408(d)(2)(C) of the Cost Savings Act. The amendment addressed retention of powers of attorneys by states and provided the rule adopted by the Secretary not require a vehicle be titled in the state in which the power of attorney was issued. See Public Law 101-641 § 7(a), 104 Stat. 4654, 4657 (1990).

Because of the 1994 recodification of various laws pertaining to the DOT, the Cost Savings Act, as amended by TIMA, was repealed, reenacted, and recodified without substantive change. See Public Law 103-272, 108 Stat. 745, 1048-1056, 1379, 1387 (1994). The statute is now codified at 49 U.S.C. 32705 *et seq.* In particular, section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which

were added by TIMA (and later amended), were recodified at 49 U.S.C. 32705(b) and (c). Provisions pertaining to approval of state alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

D. Overview of NHTSA's Odometer Disclosure Regulations

The implementing regulations for the odometer provisions of the Cost Savings Act, as amended, are found in part 580 of title 49 of the Code of Federal Regulations (CFR). These regulations establish minimum requirements for odometer disclosure, the form of certain documents employed in disclosures, and the security of title documents and power of attorney forms. The regulations also set rules for transactions involving leased vehicles, set recordkeeping requirements including those for auctions, and authorize the use of powers of attorney in limited circumstances. Additionally, part 580 contains provisions exempting certain classes of vehicles from disclosure regulations and provides a petition process by which a state may obtain approval of alternate disclosure requirements. The following paragraphs summarize important aspects of the regulations.

Odometer disclosures must be made on a secure title, reassignment document, or power of attorney when a vehicle is transferred to a new owner. Section 580.5(c) requires a transferor to sign, and to print his/her name on an odometer disclosure statement with the following information: (1) The odometer reading at the time of transfer (not to include tenths of miles); (2) the date of transfer; (3) the transferor's name and current address; (4) the transferee's name and current address; and (5) the identity of the vehicle, including its make, model, year, body type, and VIN. The transferor must also, under § 580.5(e), certify whether the odometer reading reflects the vehicle's actual mileage, disclose whether the odometer reading reflects mileage in excess of the odometer's mechanical limit or, if the odometer does not reflect the actual mileage, must state the odometer reading should not be relied on. The transferee must acknowledge the reading by signing the statement. Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor.

To ensure vehicles subject to leases of four months or more have accurate odometer readings executed on titles at the time of transfer, § 580.7(a) requires lessors to provide written notice to the lessee of the lessee's obligation to disclose the mileage of the leased

vehicle and penalties for failure to disclose the information. Before a change in ownership of a leased vehicle, lessees are required by § 580.7(b) to provide disclosures comparable to those required by § 580.5(c) and (e), noted above, to the lessor along with the date the lessor notified the lessee of disclosure requirements. Additionally, the lessor must state the date the lessor received the lessee's completed disclosure statement and must sign it. Under § 580.7(d) a lessor transferring ownership of a vehicle (without obtaining possession) may indicate the mileage disclosed by the lessee on the vehicle's title unless the lessor has reason to believe the lessee's disclosure is inaccurate.

When a title is physically held by a lienholder or has been lost, § 580.13(a) allows a transferor to give the transferee a power of attorney to execute the mileage disclosure on the title once it is obtained by the transferee. Section 580.13(b) and (d) provide that the transferor must disclose information identical to that required by § 580.5(c) and (e) on part A of the secure power of attorney form. The transferee is required to sign the power of attorney form part A and print his/her name. *Id.* In turn, § 580.13(f) requires the transferee, upon receipt of the transferor's title, to make on the title exactly the mileage disclosure as disclosed by the transferor on the power of attorney.

After part A of the power of attorney form has been used, part B may be executed when a vehicle addressed on part A is resold. Part B of the secure power of attorney form allows a subsequent transferee to give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title, while maintaining the integrity of the first seller's disclosure. The disclosure required to be made by the transferor to the transferee for this transaction on part B of the power of attorney form tracks information required to be made by the transferor to the transferee on the title when ownership of a vehicle is transferred on a title under 49 CFR 580.5. Among other things, the power of attorney must contain a space for the transferor to disclose the mileage to the transferee and sign and date the form, and a space for the transferee to sign and date the form.

To ensure disclosures made through a power of attorney are accurate, § 580.15 requires the person exercising the power of attorney to certify, on part C of the form, that disclosures made on a title or

reassignment document on behalf of the original seller are identical to those found on part A of the power of attorney. This section also requires a certification, when part B is used, that the mileage disclosed and acknowledged under part B is greater than the mileage disclosed in part A.

Titles, reassignment documents, and the power of attorney form must be protected against counterfeiting and tampering by a secure printing process or other secure process (§ 580.4). These titles, reassignment documents, and powers of attorney must contain a statement referring to federal odometer law and a warning that failure to complete the form or providing false information may result in fines or imprisonment. See § 580.5(d). For a leased vehicle, the lessor is obligated to provide the lessee with written notice of the obligation to make a mileage disclosure, and that notice must contain the same warnings (§ 580.7(a)). Except in the limited context of the proper use of the power of attorney forms, no person shall sign an odometer disclosure statement as the transferor and transferee in the same transaction (§ 580.5(h)).

Part 580 establishes minimum requirements for record retention, ensuring a paper trail sufficient to support detection and prosecution of odometer fraud. Section 580.8(a) requires motor vehicle dealers and distributors, who are required to issue an odometer disclosure, to retain copies of each odometer statement they issue and receive for five years. Lessors of leased vehicles must retain the odometer statement they receive from their lessee for five years from the date they transfer ownership of the leased vehicle (§ 580.8(b)). If a power of attorney authorized by §§ 580.13 and/or 580.14 has been used, dealers must retain copies of the document for five years (§ 580.8(c)). Section 580.9 requires auction companies to retain the name of the most recent owner on the date the auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auction company took possession of the motor vehicle for five years from the date of sale. States are required, under § 580.13(f) to retain the original copy of the power of attorney authorized by § 580.13(a) or (b) and the title for a period of three years or a time period equal to the state's titling record retention period, whichever is shorter.

Other sections of part 580 establish a petition process by which states may seek assistance in revising their odometer laws (§ 580.10), may seek

approval of alternative odometer disclosure schemes (§ 580.11), and establish exemptions from the disclosure requirements of §§ 580.5 and 580.7 (§ 580.17). Exemptions in 580.17 apply to transfers or leases for: (1) Vehicles with a Gross Vehicle Weight Rating (GVWR) over 16,000 pounds; (2) vehicles that are not self-propelled; (3) vehicles manufactured in a model year beginning 10 years before January 1 of the calendar year in which the transfer occurs; (4) certain vehicles sold by the manufacturer to any agency of the United States; and (5) a new vehicle prior to its first transfer for purposes other than resale.

E. Previous State Petitions for Approval of Electronic Odometer Disclosure Schemes

The Cost Savings Act, as amended by TIMA in 1986, contains a specific provision on approval of state alternative odometer disclosure programs. Subsection 408(f)(2) of the Cost Savings Act (now recodified at 49 U.S.C. 32705(d)) provides NHTSA shall approve alternate motor vehicle mileage disclosure requirements submitted by a state unless NHTSA determines such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e) as the case may be. (Subsections 408(d), (e) of the Costs Savings Act were recodified to 49 U.S.C. 32705(b) and (c).)

Virginia, Wisconsin, Florida, New York, Texas, and Arizona filed petitions with NHTSA seeking approval of electronic alternative odometer programs under 49 U.S.C. 32705(d). NHTSA has approved, in whole or in part, five of these six petitions and not taken final action on the Arizona petition, which was made moot by the passage of section 24111 of the FAST Act and Arizona's adoption of a disclosure system under that provision. Review of the systems proposed in these petitions and the terms of NHTSA's actions in response to them, illustrates the variations in schemes between jurisdictions and the concerns raised by electronic odometer disclosure.

Petitions filed by three states, Virginia, Texas, and Wisconsin, shared certain characteristics. In each case, the proposed alternative odometer disclosure schemes applied only to intrastate transactions. Each of the three proposals also relied on multi-factor authentication to ensure the identity of persons executing the odometer disclosures. All three proposals relied on substituting electronic versions of the paper odometer disclosure form by maintaining the electronic form on state-controlled systems. These systems

also held data elements comprising the electronic title.

Virginia petitioned NHTSA in December 2006 seeking approval of electronic odometer disclosure for intrastate transfers of vehicles not subject to liens. Virginia proposed using a paperless system where users would enter the information and attestations found on paper odometer disclosures into a state electronic system. The petition stated unique personal identification numbers (PIN) and unique customer numbers sent by conventional U.S. mail would be used with the customer's date of birth (DOB) to create a verified account and signature. Dealer users would provide lists of employees authorized to make disclosures, and these individuals would get PINs by conventional mail to verify their identity. In dealer sales, the employee PIN and a dealer number would be used. Disclosures would be made in the same way a paper disclosure would be made. The seller or transferor would fill out an electronic form identical to the paper form and sign it electronically. The buyer or transferee would examine the disclosure and either accept it or reject it. Once accepted, the disclosure would be linked to the electronic title, and the transferor would be instructed to mail any paper title to the state.

A June 2008 petition by Texas sought approval of alternative odometer disclosure requirements for intrastate transactions between residents transferring vehicles not subject to liens. Texas proposed to eliminate paper titles (except as requested), create electronic titles and require in-state vehicle transfers to be made electronically. Users, who would have to be Texas residents holding a valid state identification credential, would be verified by matching four personal data elements and two forms of identification against a state database. Odometer mileage disclosures would be made by requiring both parties to separately log into a secure website, make required disclosures and verification of the mileage, and accept or reject the transaction. The seller or transferor would then mail the paper title to the state for destruction. The title and odometer disclosure would remain as an electronic record, and the transferee could receive a secure paper title on request.

Wisconsin filed a petition in September 2009 proposing an electronic odometer disclosure scheme limited to intrastate transactions where at least one party would be a motor vehicle dealer. Identity verification would be based on customers entering a minimum of three personal identifiers—name, address,

date of birth, product number, Driver License/ID number, and a Federal Employer Identification Number or partial Social Security Number—in the state system. Once verified, the user could begin the title transaction. As with the Virginia and Texas petitions, Wisconsin's proposal linked electronic odometer disclosures to the title record in the state's database. Similarly, a title could not be transferred unless the electronic odometer disclosure had been properly completed. Again, if a paper title was needed, the Wisconsin DMV would print it on secure paper with the odometer disclosure statement in the proper location and format under existing rules.

Finding that the Virginia scheme would properly verify user identities, provide security equivalent to the paper system, and create an adequate system of records, NHTSA granted Virginia's request on January 7, 2009 (74 FR 643). NHTSA granted the Texas petition on April 22, 2010 (75 FR 20925) after that state clarified the Texas system allowed transferees to obtain a paper copy of the title meeting TIMA, required dealers to retain copies of odometer disclosures, and required disclosure of the brand (the brand states whether the odometer reflects the actual mileage, reflects mileage in excess of the designated odometer limit or differs from the actual mileage and is not reliable.) *Id.* at 20928. NHTSA also noted since Texas would require persons with an electronic title to submit any paper titles to Texas for destruction, the proposal would prevent potential mischief caused by duplicate titles. *Id.* at 20929. In a final determination published on January 10, 2011, 76 FR 1367, the agency approved the Wisconsin proposal based on its user verification scheme, the linkage of a properly executed odometer disclosure to the electronic title, and the existence of safeguards preventing the simultaneous existence of an electronic and paper title.

Petitions filed by two other states, Florida and New York, differed from other petitions as systems proposed relied, to differing degrees, on the use of paper forms for executing the odometer disclosures. These paper forms, which were not titles, reassignment documents or a power of attorney specified under part 580, were employed to transmit information either before entry into an electronic system or to facilitate interstate transactions. Because paper documents are employed in conjunction with an electronic system, these odometer disclosure schemes can be referred to as "hybrid" systems because of their reliance on paper and electronic information storage.

In December 2009, Florida proposed a hybrid electronic disclosure system in December 2009 wherein the actual data entry into the state system would be made by authorized tag agents using data terminals. For private sales, authorized tag agents required transferors and transferees to fill out odometer disclosures on paper forms. These paper forms would be executed by both parties at the tag agent's facility after each had verified their identity to the tag agent. The tag agent would enter the data into Florida's system and create an electronic title for the transferee, or upon request, provide the transferee with a paper title. For dealer transactions, Florida proposed transferors with e-title would complete a secure reassignment form with odometer disclosure. When the dealer transferred that vehicle to another transferee, both parties would complete another secure reassignment form with an odometer disclosure. The dealer would take both secure reassignment forms to a tag agency. The tag agent would enter the disclosures, and the data needed to create an electronic title or provide the transferor with the option of obtaining a paper title. Similarly, a lessee of a leased vehicle with an e-title would bring the vehicle to a dealership and make the odometer disclosure on a secure physical document. The lessor would then sign a secure physical power of attorney to the dealer authorizing the dealer to execute the odometer disclosure on its behalf. The dealer would then sign a physical secure reassignment form agreeing with the odometer disclosure. When the dealer sold the vehicle to another buyer, the dealer would take the various physical documents (bill of sale, reassignment document, and power of attorney) to the tag agency, where the tag agent would enter the required data and either create an electronic title in Florida's system or have a paper title provided for the buyer.

New York filed a petition with NHTSA in November 2010, seeking conversion of the existing paper process for dealer transactions to an electronic one. A transferor's odometer disclosure would be made on the title and then recorded in New York's system by a specific dealer employee whose identity had been verified. If that dealer sold a vehicle to another licensed New York dealer, the selling dealer would enter the current odometer reading, vehicle and seller and purchaser information. The purchasing dealer would subsequently sign on, review the selling dealer's odometer disclosure, and other data and accept or reject the transaction.

Subsequent New York dealer transfers would be recorded in the same manner.

New York proposed that when a vehicle owned by a New York dealer is sold to a retail purchaser, salvage dealer, out-of-state buyer, or other non-New York dealer purchaser, the selling dealer would access its system, enter odometer and other information, including the seller and purchaser. A two-part sales receipt/odometer statement would be created, and if correct, would be accepted by the buyer. The dealer would then print a two-part sales receipt with a disclosure statement on each part. The dealer would retain one part, and the purchaser would be given the other, along with the original title acquired by the dealer upon vehicle purchase.

NHTSA granted the Florida petition in part and denied it in part, approving provisions for private party transactions but denying proposed terms for dealer and leased vehicle transactions. 77 FR 36935 (June 20, 2012). Among other things, NHTSA observed dealer transactions relied on odometer disclosures being made on documents other than the title itself. This, in the agency's view, is inconsistent with TIMA's command that disclosures be made on the title and not on a separate document. Further, the Florida dealer transaction scheme allowed issuance of new registrations after submission of a disclosure statement on a physical reassignment document rather than on the title itself, thereby violating the statutory requirement that a title with an odometer statement must be submitted prior to registering the vehicle. Florida's proposed requirements for leased vehicles were denied on similar grounds because of the numerous times disclosures had to be made on documents other than the title that did not meet security and content thresholds. Finally, the use of a power of attorney, where the lessor had access to the title, was inconsistent with TIMA.

NHTSA's initial determination denied New York's petition because it used a non-secure receipt for odometer disclosure in transfers between New York dealers and out-of-state buyers and was, therefore, inconsistent with federal odometer law. 76 FR 65487, 65491 (Oct. 21, 2011). New York subsequently amended its proposal by replacing the non-secure document with a secure state-issued paper, New York State MV-50 (Retail Certificate of Sale) form. The result of this change was a consumer purchasing a vehicle from a dealer would then receive the original title and odometer statement executed by the owner, who sold the vehicle to the dealer, and the secure MV-50 form with

an odometer disclosure. Additionally, the mileage disclosed at the time of the sale to the dealer and the mileage disclosed at the time the dealer sold the vehicle to the subsequent retail purchaser would be recorded in New York's system and available for viewing through a web portal. The agency's final determination, 77 FR 50381 (Aug. 12, 2012), granted the New York petition as amended. NHTSA found the employment of the secure state-issued and numbered MV-50 form, in conjunction with the odometer disclosure on the original seller's title and the recording of these disclosures in New York's electronic system, met the purposes of TIMA.

Processing foregoing petitions illuminated concerns relevant to this final rule. Any electronic odometer disclosure system must follow TIMA's command that odometer disclosures must be made on the title itself, the electronic equivalent of that title, or a selectively narrow set of tightly controlled secure documents. While jurisdictions should be accorded a degree of flexibility in designing and executing electronic titling and odometer disclosure schemes, an electronic odometer disclosure system should minimize or eliminate odometer disclosures on documents other than the title. Other concerns include methods of transmitting secure paper documents, the means for verifying the identity of transferors and transferees, the potential for the simultaneous existence of paper and electronic titles and the problems posed by interstate transactions between states with traditional and electric systems.

NHTSA's experience with petitions filed by Virginia, Texas, Florida, New York, and others demonstrates states choose to create a paperless system where all parties to a transaction make direct entries into the system or may employ a "hybrid" scheme where paper forms are employed as part of the process. As discussed below, some commenters responding to the NPRM believed amendments proposed by NHTSA did not adequately address the characteristics of such hybrid systems. An additional concern raised by commenters, particularly states that had previously had alternative odometer disclosure systems approved through the petition process, was the applicability of provisions in the final rule to those systems. The agency believes provisions of this final rule are sufficiently flexible to minimize potential conflicts with terms of our prior approvals of alternative odometer disclosure schemes.

F. Notice of Proposed Rulemaking

The NPRM was published in the **Federal Register** on March 25, 2016 (81 FR 16107). This notice explained the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21, or Pub. L. 112-141) directed NHTSA to prescribe regulations permitting any written odometer disclosures or notices to be provided electronically. *See* section 31205, 126 Stat. 761 (2012). The proposed amendments sought to allow odometer disclosures in an electronic medium while maintaining accurate odometer disclosures and aiding law enforcement in prosecuting odometer fraud. To accomplish this end, the proposal addressed electronic signatures and identity verification, security concerns, record retention, leased vehicle transfers, and interstate transactions between jurisdictions with electronic and paper titles. The NPRM proposed modifying odometer disclosure exemptions for transfers of ten year old vehicles to transactions involving 25 year old vehicles. Other proposed amendments addressed restructuring of part 580, corrections to typographical errors and updating NHTSA's address.

Although Congress had directed that NHTSA promulgate regulations allowing electronic odometer disclosures and, through the FAST Act amendment discussed above, facilitated state adoption of electronic odometer disclosure systems until the effective date of this final rule, few jurisdictions have implemented schemes for electronic titles and electronic odometer disclosure, either in whole or in part. Given the nascent state of electronic titling and odometer disclosures, as well as variations in existing title systems in states and territories, the NPRM asked for comments on how prescriptive NHTSA's approach should be. While more prescriptive requirements might better protect vehicle buyers and force a degree of uniformity in future electronic systems, such an approach by NHTSA could limit or hinder adoption of electronic titling and odometer disclosure system. Additionally, a highly prescriptive approach could be interpreted to be inconsistent with the direction in MAP-21 to promulgate regulations that simply permit electronic disclosures. The foregoing concerns prompted NHTSA to specifically request comments in the NPRM on whether it should adopt a minimalist approach or a more prescriptive set of rules.

NHTSA chose to propose modifications to the existing structure of part 580 to accommodate electronic

odometer disclosure schemes. Accordingly, the NPRM sought to add new definitions in part 580.3 for the terms "Electronic Document," "Physical Document," and "Sign or Signature." As proposed, "Electronic Document" would mean "a title, reassignment document or power of attorney that is maintained in electronic form by a state, territory or possession that meets all the requirements of this part." The NPRM proposed defining a "Physical Document" as "a title, reassignment document or power of attorney printed on paper that meets all the requirements of this part." The proposed definition of "Sign or Signature" encompassed both hand written and electronic signatures and, for the electronic signature, also specified that a valid electronic signature must incorporate an identity authentication scheme equivalent to or greater than a NIST Level 3 system. This definition also specified a valid electronic signature must be made by the specific individual whose identity had been verified, regardless of whether the person was signing as in individual or as a representative of a business. The NPRM specifically requested comments on the propriety and appropriateness of these proposed definitions. In addition, the NPRM asked for comments on implementation of identity verification for transferors and transferees in electronic transactions, including what level of NIST verification should be appropriate, whether car dealers should provide secure computing services, and what security measures should be mandatory for such services.

In contrast to a written signature, which through handwriting analysis can be used to identify an individual even in the event of forgery, an electronic signature is, without sufficient verification and other safeguards, anonymous. Because of this, NHTSA proposed that a valid electronic signature must be made by an individual. The NPRM also asked for comments on whether any other requirements are necessary to ensure investigators can back trace an electronic "signature" to identify the individual and/or computer used in the electronic equivalent of a paper trail or whether the proposed requirements could be used to identify individuals making unauthorized alterations to disclosure statements.

Consistent with its approach of modifying existing provisions of part 580 to allow electronic odometer disclosures, NHTSA also proposed amending § 580.4, which governed security features of printed forms, by creating a new paragraph (a) for paper documents and new paragraph (b) for

electronic records. The requirements for paper documents remained unchanged while the proposed paragraph (b) requirements set forth that electronic titles, power of attorney forms, and reassignment documents must be maintained in a secure environment and protected from unauthorized modification, alteration, or disclosure. Paragraph (b) also proposed that the system storing title and odometer disclosure information must record dates and times when documents are created, when odometer disclosures contained are signed, when documents are accessed, and when any attempt is made to alter or modify documents. The NPRM asked for comment on these proposals, including the degree to which the security and authenticity requirements for electronic documents appropriately matched those for paper documents.

The NPRM also addressed a bedrock concern of any electronic system creating and maintaining records having financial import—system security. Rather than attempt to specify security requirements, the NPRM explained the agency made a tentative determination that such an effort would be inappropriate given the comparatively slow pace of rulemaking in comparison to the rapidly evolving and changing landscape of cyber security. Just as software and hardware are constantly evolving and improving, cyber-attacks and efforts to undermine the security of electronic data systems are also changing rapidly and frequently. Moreover, the NPRM noted potential risks to property interests and commerce presented by insecure vehicle titling and odometer disclosure systems would be addressed by the jurisdictions creating these systems. The jurisdictions doing so would be better positioned to assess security risks and craft appropriate responses. The NPRM nonetheless requested comments on whether NHTSA should establish minimum security requirements, including hardware and natural disaster specifications, and if such security requirements should be modeled on the Federal Information Security Management Act (FISMA) framework.

Section 580.5 of part 580 dictates the content and manner of odometer disclosure. The NPRM proposed adding the phrase “whether a physical or electronic document” in § 580.5(a) so the disclosure requirements specified in § 580.5 would apply to paper and electronic transactions. Similarly, the NPRM also proposed amending § 580.5(c), governing the specific disclosures that must be made when transferring title, by adding the phrase

“physical document” in instances of paper title transfers and “electronic form incorporated into the electronic title.” to § 580.5(c) for instances of electronic title transfers. The agency also added a requirement that disclosures in the case of electronic titles must be on an electronic form incorporated into that title, that the electronic disclosure must be incorporated into the electronic title, and, in jurisdictions with electronic titles, reassignment documents could not be used in lieu of making the odometer disclosure electronically. The agency also asked for comments on the proposal that disclosures be made on an electronic form incorporated into the electronic title.

Under § 580.5(d), paper forms used to make odometer disclosures must contain certain legal notices and warnings intended to ensure those executing the forms are aware of their responsibilities and potential liability when doing so. The NPRM proposed extending these requirements to electronic disclosures transfers by amending § 580.5(d), specifying that in instances of electronic transfer, the required information must be displayed on the screen, and acknowledged as understood by that party, before any signature can be applied to the transaction. NHTSA also proposed amending § 580.5(f), requiring transferees to print their name on the disclosure and return a copy to the transferor, to restrict its application to paper transactions only. Because § 580.5(f) also requires transferees to provide transferors with a copy of the executed disclosure statement, the agency also proposed electronic disclosure systems provide a means for parties involved with the transaction to access copies of the disclosure. Although this proposal expanded the paper requirement from making a copy available to one party to both parties, NHTSA believed the burden of making an electronic copy of the disclosure statement to both parties rather than one would be minimally burdensome. The NPRM sought specific comments on these proposed amendments.

Section 580.5(g) of part 580 addresses the situation in which a vehicle has not been titled or where the existing paper title does not have sufficient space for making an odometer disclosure. As explained in the NPRM, NHTSA tentatively believed this provision should only apply in jurisdictions where paper titles and odometer disclosures are used. The agency thought any electronic titling system would have the capability to accept disclosures for multiple transactions

and could be configured to accept an odometer disclosure immediately prior to creation of the first electronic title. Accordingly, the NPRM proposed limiting application of § 580.5(g) to transactions employing paper documents in jurisdictions without electronic title systems. The NPRM asked for comments specifically addressing this proposal.

The NPRM also proposed adding a new § 580.6 to part 580 to create requirements resolving unique concerns posed by electronic odometer disclosures. To ensure systems creating and maintaining records provided a minimum level of security and certainty, the NPRM sought to add § 580.6(a)(1) requiring electronic records to be retained in a format that cannot be altered and, further, that indicates any attempts to alter it. As it is critical that parties to a transaction are who they claim to be for ownership and law enforcement purposes, the NPRM proposed in § 580.6(a)(2), a requirement that any electronic signature identify an individual. The section also proposed if an individual is acting in a business capacity or otherwise on behalf of any other individual or entity, that the business or entity also be identified as part of that unique electronic signature. Because the requirement to maintain or provide copies of paper documents exists in various places within part 580, the NPRM proposed accommodating these requirements in electronic disclosure systems by establishing, in § 580.6(a)(3), that any requirement in part 580 to disclose, issue, execute, return, notify, or otherwise provide information to another person is satisfied when a copy of the electronic disclosure or statement is electronically transmitted or otherwise electronically accessible to the party required to receive the disclosure. Although the NPRM noted NHTSA discouraged the continued use of paper documents in electronic disclosure jurisdictions, the agency proposed accommodating “hybrid” systems such as those seen in the Florida and New York petitions by creating § 580.6(a)(7) requiring that any physical documents used to make electronic disclosures comply with the security and other requirements applicable to paper documents in part 580.

The advent of electronic titles would not eliminate the demand for paper titles, particularly because paper titles are likely to be essential to completing interstate transactions between electronic and paper jurisdictions. Moreover, paper titles will need to be accounted for when electronic title systems are created. Since the

simultaneous existence of an electronic and a paper title would provide fertile ground for odometer fraud, the NPRM proposed, in § 580.6(a)(4) that any physical title replaced by an electronic title must be destroyed after creation of the electronic title. The proposed text of this section further provided that an electronic copy of the physical title be recorded and maintained for five years and that the electronic copy be retained in a format that cannot be altered and that indicates any attempts to alter it. If a paper title needed to be created from an electronic record, the NPRM proposed, in § 580.6(a)(6), that only states or their authorized surrogates could produce a secure paper title from an electronic record and that this paper title must meet the security requirements applicable to paper titles. Additionally, the proposed § 580.6(a)(6) stated that issuance of a paper title in an electronic title state must be memorialized by a record stating the electronic title has been superseded by a paper document that is the official title. As suggested by the Texas petition seeking approval of alternative odometer regulations, NHTSA also believed electronic title systems might have a means of making a paper document available to vehicle owners who would attest to the existence of an electronic title maintained by their jurisdiction. The NPRM proposed adding a provision in § 580.6(a)(5) permitting jurisdictions to issue such a document if they chose to do so. Because NHTSA anticipated electronic title and odometer disclosure systems would rely on scanned documents at various times and under various conditions, including interstate transactions from paper jurisdictions to electronic jurisdictions, the NPRM proposed adding § 580.6(a)(7) specifying that any conversion of physical documents to electronic documents must preserve the security features of the physical document and be scanned at a resolution of not less than 600 dots per inch (dpi). Again, the NPRM sought specific comments on the foregoing proposals.

The agency also proposed several amendments to § 580.7, which governs odometer disclosures for leased vehicles. Leased vehicles present challenges to the ordinary scheme for odometer disclosures because lessors usually hold the title to the vehicle but seldom have physical control over it. When a vehicle lease is terminated, the lessee typically surrenders the vehicle to a dealer while the lessor is responsible for making the required odometer disclosures on the title. To

facilitate transactions associated with terminating the lease, § 580.7(a) required lessors to provide lessee with a written notice explaining that the lessee must provide the lessor with an odometer disclosure statement and that failure to do so, or to do so in conformance with federal law, exposes them to criminal liability. Section 580.7(b) and (c) state lessees must execute an odometer disclosure statement with any transfer of ownership and provide this disclosure statement to the lessor. In turn, the lessor is required by § 580.7(d) to execute the disclosure statement on the vehicle title in conformance with the lessee's disclosure unless the lessor has reason to believe the lessee's disclosure is inaccurate. The NPRM proposed amending § 580.7(a) to allow lessors to provide notices to lessee electronically, proposed deletion of a printed name requirement for electronic odometer disclosures by lessees in § 580.7(b) and proposed adding a new § 580.7(e) stating an electronic system maintained by a lessor must meet the proposed security requirements in § 580.4(b). The NPRM also requested comments on whether leased vehicle electronic disclosures should be a required part of the electronic system established by a jurisdiction or are best developed by individual leasing companies.

Sections 580.8 and 580.9 include requirements for odometer disclosure record retention by motor vehicle dealers and distributors and by auction companies, respectively. Section 580.8(a) specifies dealers and distributors must retain a "Photostat, carbon copy or other facsimile copy of each odometer mileage statement which they issue and receive." Under both sections, records must be stored for five years in a manner and method so they are accessible to NHTSA investigators and other law enforcement personnel. The records must also be stored so they are difficult or impossible to modify. The NPRM proposed adding requirements in a new § 580.8(d) and § 580.9 that electronic odometer disclosure records kept by motor vehicle dealers, distributors, and auction companies must be stored in a format that cannot be altered and that indicates any attempts to alter the document, consistent with the standards set forth in proposed § 580.4(b). NHTSA requested comment on whether this requirement would be sufficient to allow law enforcement to detect altered documents.

The agency also proposed modifications to the power of attorney provisions in § 580.13(a) and (b), to allow an individual with a vehicle titled

in an electronic title state to use a power of attorney to sell a vehicle in a paper title state. This proposed expansion of the use of a power of attorney, in conjunction with the agency's view that the power of attorney provisions applicable to lost titles or titles held by lienholders would no longer be needed in electronic title jurisdictions, led the agency to propose adding the word "physical" in multiple places in §§ 580.13(f), 580.14(a), (e), and (f), and in 580.15(a) to restrict application of various provisions to paper title jurisdictions. The NPRM asked commenters to specifically address the need for the proposed power of attorney and if an electronic power of attorney would also be needed or feasible.

Because § 580.17(a)(3) exempts any vehicle, which is more than 10 years old from the odometer disclosure requirements and the average age of the United States vehicle fleet has been trending upward to 11.5 years, the NPRM proposed raising the exemption to 25 years. The NPRM also requested comments on whether the exemption should be eliminated.

Another group of amendments in the NPRM were proposed to correct address changes and typographical errors as well as removing obsolete provisions and providing redesignations needed to complete the final rule.

G. Summary of Comments to the NPRM

NHTSA received 28 comments in response to the NPRM. Six comments were filed by state motor vehicle departments: The Motor Vehicle Division of the Arizona Department of Transportation (Arizona), the California Department of Motor Vehicles (California), the Florida Department of Highway Safety and Motor Vehicles (Florida), the Oregon Driver and Motor Vehicle Services (Oregon), the Texas Department of Motor Vehicles (Texas), and the Virginia Department of Transportation (Virginia). State concerns were also addressed in comments from the American Association of Motor Vehicle Administrators (AAMVA). Dealer and auctioneer concerns were voiced by comments from the National Automobile Dealers Association (NADA), the National Independent Automobile Dealers Association (NIADA), the National Auto Auction Association (NAAA), the Ohio Automobile Dealers Association (OADA), Copart Inc. (Copart), Dealertrack Inc. (Dealertrack), and Insurance Auto Auctions Inc. (IAA). Several trade associations acting on behalf of lenders also submitted comments, including the National

Association of Federal Credit Unions (NAFCU), National Title Solutions Forum of the American Financial Services Association (NTSF), the Credit Union National Association (CUNA), the Credit Union Coalition of Texas (CUCTX), and the Heartland Credit Union Association (HCUA).

Comments were also filed by insurance companies and insurance trade associations: Allstate Corporation (Allstate), the Property Casualty Insurers Association of America (PCIA), the American Insurance Association (AIA), Liberty Mutual (Liberty), and the National Association of Mutual Insurance Companies (NAMI). Other organizations, such as the Electronic Signature and Records Association (ESRA), the National Odometer and Title Fraud Enforcement Association (NOTFEA), and the National Salvage Vehicle Reporting Program (NSVRP) also filed comments. An individual, Thaddeus Lopatka, filed comments as well.

The commenters all favored regulatory changes that would allow states to implement electronic odometer disclosures as part of an electronic title system. The comments, however, differed in how this goal should be achieved. While some comments did not address the specifics of NHTSA's proposed amendments, others provided detailed analyses of the regulatory text contained in the NPRM. The comments also diverged on the extent to which NHTSA should exercise its regulatory authority. While some commenters urged NHTSA to leave as much as possible to the discretion of individual states, others felt the agency should compel creation of a national electronic title and odometer disclosure system by a specified date and impose penalties for non-compliance. The agency's proposed modification of the ten-year exemption was supported by most commenters and vociferously opposed by others. For commenters who specifically addressed the agency's proposed requirement that individual identities be established by NIST level 3 authentication, opposition was universal. Some commenters also voiced reservations about the structure of the proposed amendments, which, in their view, appeared to adopt an unduly narrow vision of how electronic odometer disclosure and electronic titling systems would function. For these commenters, NHTSA's proposal did not adequately address the potential adoption of hybrid systems employing a mixture of paper documents and electronic processes.

Two commenters, NADA and NAAA, suggested NHTSA issue an SNPRM

prior to issuing a final rule while two, NAMIC and Texas, suggested NHTSA delay issuance of a final rule. NADA stated an SNPRM might be needed because of the complex array of potential motor vehicle transfers and potential variations between state systems that NHTSA needs to explore. NAAA stated an SNPRM might be required to explore the effect of any delays inherent in producing paper titles on exporting vehicles. Texas stated the proposals put forward in the NPRM indicated an apparent misunderstanding of current title processes and urged the agency to work with stakeholders to draft clearer, more meaningful language. NAMIC suggested delay so NHTSA could convene an assembly of state officials with the goal of forging a national electronic titling and odometer disclosure system.

1. Scope of the Final Rule

NHTSA's March 25, 2016, NPRM stated the agency's view that the directive in MAP-21 to promulgate rules allowing electronic odometer disclosure was intended only to facilitate this change without imposing additional requirements on stakeholders (81 FR 16114). Nonetheless, the NPRM requested comments on whether the proposals therein should be extended to prevent, or limit, variation among the various state systems.

Comments submitted in response to this solicitation were generally split into two opposing positions. Several commenters urged creation of a uniform national electronic title and disclosure system while others urged the agency take a minimalist approach. Insurers favored the former approach while most states embraced the latter. The AIA contended allowing both paper and electronic disclosures complicated an already cumbersome process. AIA urged NHTSA to require electronic titling and odometer disclosure and warned the co-existence of electronic and paper title and disclosure systems will inevitably lead to fraud, title washing, errors, the inability to find the owner for recalls, and a lack of consumer understanding of the process.

The organization further urged NHTSA to establish a date certain by which all states must move to an electronic title and disclosure system and establish penalties for jurisdictions not meeting this deadline. NAMIC offered similar concerns about the potential complexity of co-existing paper and electronic systems as well as potential issues caused by incompatible state databases. As noted, NAMIC urged NHTSA to convene meetings with states and other stakeholders to formulate a

plan for a more uniform electronic system. Although Texas adopted a position that NHTSA's rulemaking should not be prescriptive and should grant states as much leeway as possible in developing electronic title and odometer disclosure systems and encouraged NHTSA to explore the use of the U.S. Department of Justice's National Motor Vehicle Title Information System (NMVTIS) as a national system to facilitate the transfer of electronic titles. According to Texas, leveraging this existing system would assist with mitigating any costs associated with implementing a national electronic title transfer system and aid the rate of adoption while easing the implementation process.

Among state commenters, Virginia stood alone in supporting an expanded scope for the final rule. Virginia's concerns included the possibility of broad variations among state systems that would hinder interoperability and preclude the consistency required to allow consumers to conduct interstate transactions. While Virginia advocated rules to enforce consistency in security standards, its comments also decried the proposed NIST authentication and minimum dot per inch standards as well as the inability of traditional rulemaking to keep pace with rapidly changing technologies. Texas, California, and Florida offered comments stating the scope of the NPRM proposals should not be expanded. Texas stated each jurisdiction should be able to facilitate the electronic process for signatures as it determines appropriate. California contended that initially, each state must be able to implement an electronic odometer scheme within its own environment. Florida echoed this sentiment while opining that flexibility is needed as states first implement intrastate systems. AAMVA stated few states had developed electronic title systems, and even fewer could support fully electronic transactions or odometer disclosures. In AAMVA's view, imposing restrictive requirements before all states have had the opportunity to evaluate their existing systems and determine what such a transition could look like would be premature. ESRA's comments also endorsed a less restrictive regulatory approach stating the NPRM proposals were sufficiently broad to enhance the adoption of e-odometer and e-titling systems, and some level of variation would be acceptable if state systems are technologically neutral and promote interoperability.

2. Definitions

NHTSA proposed several changes to definitions found within § 580.3 to accommodate electronic odometer disclosures within the existing framework of part 580. The NPRM proposed new definitions for the terms “Electronic Document,” “Physical Document,” and “Sign or Signature,” where an electronic document is a title, reassignment document, or power of attorney maintained in an electronic form; a physical document is a paper document as used prior to the advent of electronic disclosures, and sign or signature may either be a hand written signature or an electronic sound, symbol, or process using an authentication system to verify the signer’s identity. As noted, the NPRM sought comments on the appropriateness of the proposed definitions.

One insurer, Liberty Mutual, four associations, AAMVA, NADA, CUCTX, and HCUA, and three states, California, Virginia, and Texas, offered comments in response to the definitions contained in the NPRM. California voiced concerns the definition of electronic document inappropriately inferred that electronic titles exist only as an electronic image of a paper document when an electronic title may only be a set of data elements maintained in a state database and not necessarily a form. AAMVA also stated “Electronic Record” would be more appropriate than “Electronic Document” and opined the proposed definition of “Electronic Document,” and “Physical Document,” should both refer to lease disclosures required by § 580.7. HCUA stated the proposed definition should clarify that a database record could serve as the title, disclosure, and audit trail. California further noted the proposed definition included “reassignment document” and “power of attorney,” which appears to conflict with proposed language for § 580.15, limiting powers of attorney to paper transactions, which California also opposed. California suggested Electronic Document should include or be restated as “titling record” and “paperless or electronic title.”

Virginia believed the definition of “sign or signature” is insufficient to address handwritten signatures on paper, handwritten signatures captioned electronically on a pen pad, electronic signatures for individuals, and electronic signatures for organizations verified through authentication measures. NADA offered similar comment, stating many of its dealer members used “pen pads” to capture signatures electronically. CUCTX noted

the proposed definition of “Sign or Signature” applied only to electronic disclosure statements and should be expanded to include other electronic documents to capture powers of attorney as well.

Texas, which provided a “redline” version of part 580 along with its written comments, suggested the definitions proposed in the NPRM be expanded by adding a definition of “Access” encompassing the means of entering, displaying and modifying previously stored data, “Agent” as person appointed by a power of attorney or authorized to act for an entity, “Electronic title” for electronic titles incorporating an electronic reassignment format or process, “Jurisdiction” meaning a state, territory, or possession of the United States of America, “Mileage” meaning the actual distance a vehicle has traveled, “Printed Name” meaning either the clear and legible name on a physical document or an equivalent electronic record and “Sign or Signature” meaning either a traditional hand-written signature on a paper disclosure or an electronic sound symbol or process either incorporating an authentication process or performed before an authorized employee or agent of the jurisdiction. Liberty Mutual suggested adding a definition for an electronically signed document used specifically for title transfers for total loss vehicles.

NADA offered a similar comment to that provided by Texas and urged NHTSA to add a clarifying definition of the term “State” to read “any jurisdiction of the United States that issues motor vehicle titles, and the authorized agent(s) for any such jurisdiction.”

3. Identity of Parties to a Motor Vehicle Transfer and Security of Signatures

The definition of “Sign or Signature” proposed in the NPRM specified a valid electronic signature must identify a specific individual. This requirement stems from NHTSA’s concern the comparative anonymity of an electronic signature to a written signature could frustrate identification of perpetrators of odometer fraud. This proposed requirement also appeared in § 580.6(a)(2) of the proposed amendments. The agency received many comments in response to this proposed requirement, and these comments are discussed below.

As proposed in the NPRM, the definition of “sign or signature” for an electronic document included an electronic sound, symbol, or process using an authentication system equivalent to or greater than Level 3 as

described in NIST Special Publication 800–63–2, *Electronic Authentication Guideline*, which identifies a specific individual. NHTSA proposed incorporating the NIST Level 3 requirement into the definition of an electronic signature because of agency concerns that electronic odometer disclosures could easily be made by someone other than the actual transferor or transferee involved in the transaction. The NPRM requested comments on the appropriate NIST level as well as other forms of verification and security, including whether dealers should be required to provide secure computing services to transferors and transferees.

Commenters addressing the issue uniformly opposed the proposed requirement that identity verification for electronic odometer disclosures must meet NIST Level 3. California noted NIST Level 3 authentication went beyond what is required for current paper transactions. In California’s view, prescribing a NIST Level 3 identity authentication, which, among other things, could entail verification of a government ID, such as a driver license, and a financial or utility account, is unnecessary. California argued a Level 3 process would be burdensome and impractical, if not impossible, to implement. California contended the manner of identity verification be left to states at a level strong enough to reasonably identify the signing party and should not be set above NIST Level 2. Florida contended the cost and complexity of implementing a Level 3 system may prohibit many states from being able to provide electronic titles and odometer disclosures. Further, Florida argued a Level 2 solution would still provide greater security than the existing paper process. Virginia asked if use of pen pad for electronic transactions done in person before a state employee or agent—essentially replicating the present paper process—met NIST Level 2 requirements.

Texas, like California, argued against any NIST level requirement because jurisdictions should be responsible for the secure electronic process just as they are for the existing security provisions for paper documents. According to Texas, states have an interest in the security of vehicle and odometer transactions equal to that of the federal government and are more familiar with their jurisdiction’s business needs and those of its customers. Should NHTSA specify a NIST level, Texas urged that it not be set above NIST Level 2. AAMVA noted the NPRM proposal did not distinguish between electronic signatures being made in the presence of a state employee or agent and remote

transactions. The association also urged the agency to not require NIST Level 3 authentication and observed attaining this level of security would be very difficult because of the requirement that all elements of the system meet NIST Level 3. Further, AAMVA argued an attempt to force all potential participating parties to comply with a standard set at NIST Level 3 would ultimately lead to a common inability to do so. Compared to the existing paper signature process, AAMVA stated NIST Level 2 would be achievable and provide suitable assurance of identity.

Other stakeholders also argued against NIST Level 3 authentication. Dealer groups OADA, NAAA, NIADA, and NADA stated obtaining and maintaining a NIST Level 3 system would require significant investment by states and dealers. This burden is not, in the view of these commenters, necessary when compared to the benefits achievable with a Level 2 system. These organizations also believe costs of Level 3 authentication would prevent states from attempting to employ electronic title and odometer disclosure systems. Lender associations and other entities also opposed the proposal to require Level 3 authentication. HCUA stated Level 2 authentication should be sufficient while the NTSF argued Level 3 authentication was not required. In NTSF's view, as supported by the ANSI X9.117-2012 "Secure Remote Access Mutual Authentication" authentication framework, vehicle transfers are relatively low risk transactions that do not require the security provided by NIST Level 3. Further, NTSF observed the NIST Standards are applicable to federal government computer systems and should not be applied in this context. Finally, given the costs of Level 3 for states and others, NTSF recommended the final rule replace Level 3 with Level 2. ESRA observed the threat of financial loss presented by fraudulent odometer disclosures is commensurate with Level 2 authentication and this level is adequate for odometer disclosures.

The NPRM also requested specific comments on whether dealers should be required to provide secure computing services to transferors and transferees. NIADA and IAA responded, noting NHTSA should be mindful vehicle transfers are processed by many entities with different resources and are not limited to dealers. In the view of these commenters, imposing the foregoing requirement on a wide range of potential parties to a transfer would be unduly burdensome.

NHTSA also asked for comments on whether any requirements beyond those

proposed in the NPRM would be needed or desired given the need for an odometer disclosure system to provide an adequate paper trail to identify the signer of an electronic odometer disclosure. Florida stated electronic odometer disclosure systems provide more security than the paper process. According to Florida, paper transactions do not involve verifying signatures and titles or other reassignment documents are often given to the transferee without being filled out so the incomplete forms are filled out by the transferee. Because electronic systems would require completeness and allow more frequent and accurate mileage reporting, Florida argued NHTSA should not adopt more stringent requirements in the Final Rule.

4. Document or Record Security and System Security

Prior to the issuance of this final rule, § 580.4 set forth the requirements for security features incorporated into paper documents employed to perform odometer disclosures. These security features are intended to prevent modification of existing disclosures and deter the use of counterfeit documents. The NPRM proposed amending this section through addition of new requirements for electronic documents or titles intended to provide the same level of security for electronic records as exists in secure paper documents. The proposed language would require electronic titles, powers of attorney, and reassignment documents to be maintained in a secure environment protecting the record for unauthorized modification. This environment would be part of a system that records when the document or record is created, when the odometer disclosures within are signed, when documents are accessed, and the date and time any attempt is made to alter the documents as well as any alterations made in the document.

The NPRM first sought comment on whether the proposal appropriately matched the security and authenticity requirement for electronic documents to the existing requirements, which apply to paper documents. While the NPRM contained a discussion outlining why the agency was not proposing specific security standards for these storage systems, NHTSA also asked for comment on whether the final rule should incorporate more specific security requirements for systems used to create and maintain electronic titles and odometer disclosures.

With the caveat that many commenters noted that the proposed language referred to an electronic "document" when reference to an electronic "record" would be more

appropriate, this portion of the proposed rule enjoyed general support with many commenters strongly endorsing the agency's decision not to impose specific security standards for electronic title and odometer disclosure systems. NAAA and IAA noted the proposal required protection against unauthorized changes but did not address how entry errors are to be corrected. NTSF stated the requirement to track when records are accessed seemed to be unduly burdensome given the nature of the records involved. ESRA recommended NHTSA take an "agnostic" approach to electronic records storage by allowing states to store electronic data and documents in their secure data systems and to employ reasonable efforts to prevent such records from being altered.

Some commenters believed the proposal was too prescriptive. California noted paper documents should not be compared to an electronic process and that it would be unnecessary to prescribe anything more than maintaining electronic titling and odometer disclosure information in a secure system or environment. Texas stated the proposed requirements are more cumbersome than those for physical documents, and jurisdictions should be given the same latitude for electronic and physical documents. Virginia objected to the requirement that attempts to alter or modify records be tracked. Virginia noted the proposal did not distinguish between authorized and unauthorized modification and that any unauthorized attempt at access should result in denial of access and not creation of a record. AAMVA stated most systems track dates and times on who accessed certain records and asked NHTSA to exercise caution so requirements do not interrupt titling agency business.

Comments supporting NHTSA's decision to not adopt specific system security requirements were submitted by insurers, dealer associations, lender groups, states, and others. Allstate stated that states should have the flexibility to assess systems requirements that ensure information security. Dealer groups NADA, OADA, and NIADA agreed with NHTSA's approach, as did Dealertrack, stating that technology moved too rapidly for effective regulation by rules. NADA and NTSF opined that specific system security requirements would be counterproductive for the same reason. ESRA recommended only general security standards and safeguards be adopted to prevent obsolescence and to empower states adopt systems they determine are most appropriate. CUCTX

also noted states have been, and should be, responsible for maintaining secure electronic title records. Arizona stated specific security standards would be too inflexible. Virginia urged any security requirements be technology neutral to keep pace with changing threats. Texas questioned the need for any security requirements given the strong interest any jurisdiction would have in maintaining the security and integrity of public records. AAMVA also questioned the need for systems security requirements based on the history of states securely maintaining data for many years. In AAMVA's view, specific system security requirements would hinder states in their ability to protect this data rather than enhance it.

5. Odometer Disclosures

NHTSA proposed several changes to § 580.5, *Disclosure of odometer information*, to accommodate electronic odometer disclosures. The proposed amendments sought to ensure the content required in the paper-based disclosure system would be carried forward into an electronic environment. Therefore, where information was required to be entered on the title under the paper system, the NPRM proposed, in 580.5(c), that the same information be entered in "an electronic form incorporated into the electronic title." Similarly, where notices of potential liability for failing to meet certain requirements are required on paper documents, 580.5(d) of the NPRM proposed the same warnings be provided electronically for electronic transactions. At the same time, differences between an electronic and a paper-based transaction led the agency to propose differing requirements for the two regimes. A requirement that a printed name be affixed to the disclosure on a paper title in § 580.5(f) was not carried forward into the agency proposal for electronic transactions as sufficient means independent of a handwritten signature should be available to identify individuals executing electronic disclosures. Where the paper based system requires the transferee to sign the executed disclosure statement and return a copy to the transferor, § 580.5(f) of the NPRM proposed an electronic system make copies of the executed documents available to the parties.

Comments addressing this portion of the agency's proposal supported the proposed changes. These commenters nonetheless offered observations and corrections, which they believed would better reflect the characteristics of electronic odometer disclosure and electronic title systems and clarify the

proposals made in the NPRM. The proposal's directive in 580.5(c) that an odometer disclosure be made on an "electronic form incorporated into the electronic title" led some commenters to observe this nomenclature was inconsistent with any form of electronic disclosure and electronic title system save those that relied on scanning images of documents and storing these documents electronically.

AAMVA observed NHTSA's approach seemed to transform a paper-based disclosure process into an electronic disclosure by simply scanning current documentation—the title, the reassignment, or the power of attorney. The organization stated any reliance on a physical document, whether scanned or not, does not constitute an electronic disclosure system and should not provide the basis for an electronic disclosure system. Instead, AAMVA noted, an electronic disclosure and title record would be data fields making up an electronic record. HCUA offered similar views, urging NHTSA to clarify that database records can be substituted for scanned images of paper titles by state DMVs. NTSF also stated it is important to note states maintain electronic title records as database records and not scanned images of paper titles. The organization contended the proposed rules wrongly indicated title and disclosure documents must exist as embedded replicas of the corresponding paper documents when the actual electronic record would be an actual secure electronic database record of the transaction, including the metadata supporting the authentication of the individual executing the signature, as well as a full audit trail of transactional data. ESRA offered similar comments about the nature of electronic titles and recommended replacing the term "form" with the term "statement" when referring to electronic disclosure documents, and using the term "record" instead of "form" when referring to electronic titles. Texas argued it is paramount that NHTSA recognizes what an electronic process is and allow latitude in their development.

Other comments focused more narrowly. California stated electronic and paper titles will only resemble each other to the extent they contain the same information. Florida and Virginia simply stated they supported the agency proposal to incorporate the odometer disclosure into the electronic title. Texas strongly supported requiring odometer disclosures to be made "on" the electronic title while noting it did not support allowing a separate "electronic" or physical reassignment apart from the electronic title. Because

there would be unlimited "space" for mileage disclosure entries in an electronic title system, Texas contended a reassignment process that is not specifically attached to an electronic title should be prohibited. Arizona stated requirements in §§ 580.5(c) and 580.6(a)(7) regarding the use of physical documents for a transfer being conducted electronically appear to conflict and suggested the provisions in § 580.6(a)(7) take precedence with § 580.5(c) being reworded to eliminate the conflict.

The NPRM proposed amending § 580.5(d) to provide the same warnings and notices present on paper odometer disclosure forms also be presented to parties executing an electronic disclosure. As presented in the NPRM, the amendment stated, "the information specified in this paragraph shall be displayed, and acknowledged as understood by the party, prior to the execution of any electronic signatures." Texas supported including the proposed statements and warnings but contended the electronic signature should be sufficient acknowledgement that statements were read and understood. Therefore, Texas argued against any additional acknowledgement such as a checkbox. IAA observed this language did not provide adequate guidance on the sequence in which the odometer disclosures would be executed and that if neither transferor nor transferee may sign until the acknowledgement by both, it would be difficult to envision the proper sequence of execution.

NHTSA also proposed amending § 580.5(f), which specified transferees receiving a paper odometer disclosure from a transferor must sign the disclosure statement, print their name, and return the signed copy to the transferor. The proposed amendment eliminated the requirement for a printed name in electronic transactions and stated electronic disclosure systems must provide a copy to the parties. With one exception, all commenters responding to this proposal supported elimination of the printed name requirement. California, Florida, Virginia, NADA, NTSF, and AAMVA all supported eliminating the printed name requirement in electronic disclosures, with most also stating identity authentication employed in these systems would make the printed name requirement superfluous. Texas, however, strongly opposed elimination of the printed name requirement, explaining a printed name would still be needed in electronic disclosures when an individual employee of a business executed the disclosure on behalf of their employer. California

opposed the proposal that electronic disclosure systems provide a copy of the executed disclosure statement to the parties. In California's view, states should have the option of choosing whether to make copies available. NADA supported the proposal that systems make copies available as did Texas. Texas also recommended more generic language to require the jurisdiction to make it available.

An additional modification proposed in the NPRM sought to expand the provisions of § 580.5(g) to electronic systems. Section 580.5(g) addresses issues that may arise in sales when a brand-new vehicle has not yet been titled or when an existing title for a used vehicle does not have sufficient space to accommodate multiple disclosures. In such an instance, the section provided that a separate document could be used for the disclosure. To extend this section to electronic disclosures, the NPRM proposed that in jurisdictions with electronic title and odometer disclosure, the system shall provide a means for making the disclosure electronically and incorporating it into the electronic title when the title is created.

Commenters supported this proposal but noted potential difficulties in implementing it. Some commenters suggested states have the option of employing either a paper or an electronic system for these transactions, even where the jurisdiction provided an electronic title and odometer disclosure system. California and Virginia stated they agreed with the proposal. Florida generally supported the concept but observed the ability to use only an electronic means depended on whether the Manufacturer's Certificate of Origin (MCO) is available electronically or only on paper. According to Florida, if a jurisdiction maintains electronic title and odometer disclosure systems but the manufacturer has a paper MCO, the jurisdiction must have a way to capture signatures from this paper document into the electronic system. NADA voiced similar concerns and noted the uncertainty of electronic versions of required documents being available until electronic systems became universal. Texas did not support the requirement for a secure electronic process for these transactions since the paper system does not require use of a secure document, manufacturers control the form of the MCO, and NHTSA did not propose imposing requirements on manufacturers for the MCO.

Texas also suggested clarification to paragraph (g). Texas noted the words "or if the physical title does not contain a space for the information required"

are no longer relevant because part 580 requires all issued titles to contain space for the required information.

Additionally, Texas recommended the text specify when use of a separate reassignment document is permitted. However, Texas would support allowing (but not requiring) jurisdictions to employ an electronic process.

6. Requirements for Electronic Transactions

Section 580.6, previously reserved for future use, was employed by the NPRM as the vehicle for proposed new regulations establishing requirements for electronic odometer disclosures. These proposals sought to establish fundamental requirements for electronic odometer disclosure systems that would protect against odometer fraud while facilitating smooth and efficient transactions. The proposed regulations address recordkeeping requirements, access to electronic documents, identification of participants, conversion of paper records to electronic records, the potential for simultaneous electronic and paper titles, and the character of any paper documents employed as part of an electronic title system.

The NPRM proposed adding § 580.6(a)(1) requiring any electronic record be retained in a format that cannot be altered and, further, that indicates any attempts to alter it. Commenters addressing this proposal supported it, providing the ban on alterations was limited to unauthorized alterations. AAMVA supported NHTSA's intent to provide a mechanism to track *unauthorized* access and alteration but warned against language that would limit titling agency authority or impede titling agency business. NAAA similarly urged the agency to ensure any final rule include language allowing jurisdictions to employ an error correction mechanism. ESRA again urged the agency to take an "agnostic" approach and allow states to employ reasonable efforts to protect records. NADA similarly cautioned requirements protecting record integrity be practical and appropriate for states, their agents, and all other parties involved. California agreed protections were needed to prevent unauthorized attempts to access and alter information but urged caution against imposing disruptive requirements. Florida requested NHTSA distinguish between authorized and unauthorized alterations while Texas stated jurisdictions be allowed the latitude to maintain electronic records in the fashion they feel is the most secure. Virginia noted the proposal did not separate legitimate corrections from

unauthorized alterations but supported security measures, record retention requirements, and audit and review.

Subsection 580.6(a)(2) of the agency's proposal creates a requirement that any electronic signature identify an individual and, further, that if the individual is acting in a business capacity or otherwise on behalf of any other individual or entity, that the business or entity also be identified as part of that unique electronic signature. As explained in the NPRM, the agency believed this requirement is needed both to facilitate identity authentication and to create a record of the individual executing an electronic signature. Commenters voiced opposing views on this proposal. While states and some associations supported it, dealers and vehicle auction organizations were strongly against it. Lender groups, NTSF and HCUA, supported the proposal. AAMVA also supported the proposal, and ESRA stated the requirement represented a best practice. California and Florida offered support without elaboration while Virginia stated it supports signatures applying to an individual and not to an organization. Texas supported the requirement with the proviso that there be no specific requirements on how this is to be accomplished.

NADA stated it had concerns about the proposal for several reasons. The association noted transfers for odometer disclosure purposes do not involve transferees taking title to the vehicle when that transferee is a dealership, wholesaler, insurance company, auction, or a lessee. Therefore, NADA argues the rules must accommodate a process by which odometer disclosures are made on electronic documents without title transferring (reassignments). NADA also questioned why agents acting on behalf of licensed entities should have to sign as individuals if they use the unique identifiers issued to their licensed employer. NADA urged NHTSA to consider adopting two sets of electronic transaction requirements, one for licensed entities such as dealers, distributors, auctions, lessors, lenders, and their agents, and one for private individuals. IAA, a vehicle auction company, stated the proposed rule would, in its case, result in a single employee signing on behalf of a host of vehicle owners bringing their vehicles for sale.

According to IAA, adoption of this requirement would necessitate many thousands of unique electronic signatures, posing a huge burden on the auction company and states processing the signatures. As NADA did, IAA

observed auction houses were state-licensed and subject to state regulation. As such, IAA argued states and licensees should be given the latitude to fashion workable methods for identification. Copart, another auction provider, offered the same observations about the effect of this proposal on businesses that provide a venue for selling large volumes of vehicles for many different owners. The company urged NHTSA to seek a solution allowing various industry stakeholders to develop reasonable methods for signing odometer disclosures. NAAA, a group representing auctioneers, stated the proposal was not workable for bulk processors like their members. In NAAA's view, creating thousands of unique signature credentials for each auction would be both a logistical nightmare and an opportunity for increased fraud. To address these problems, NAAA suggested NHTSA issue a second notice of proposed rulemaking incorporating comments from both industry stakeholders and states before proceeding to a final rule.

The process of executing an odometer disclosure requires notices, warnings, and instructions to be read, information to be supplied by the transferor, acknowledgement and acceptance of the disclosure by the transferee, and, in paper transactions, a copy of the signed disclosure statement must be given to the transferor by the transferee. To enable the needed access to text and other information in electronic disclosure schemes, NHTSA proposed adding § 580.6(a)(3), stating any requirement in the regulations to disclose, issue, execute, return, notify, or otherwise provide information to another person is satisfied when a copy of the electronic disclosure or statement is electronically transmitted or otherwise electronically accessible to the party required to receive the disclosure. Two associations, AAMVA and ESRA, and two states, California and Virginia, commented on this specific proposal. AAMVA opposed the proposal, arguing the responsibility to provide odometer disclosure information resides with the transferee and transferor and should remain there. AAMVA also contended any notification requirements should be transaction-based rather than the process-based individual account method proposed by NHTSA. In AAMVA's view, the NHTSA proposal would impose additional technology requirements on states.

ESRA noted the federal Electronic Signatures in Global National Commerce Act ("ESIGN") establishes how a consumer may request a paper

copy of an electronic record. Arguably, therefore, precedence has been set for permitting vehicle owners to obtain paper copies of e-titling documents, including odometer disclosures, in any state e-titling system. California argued states should not be required to provide the access described, and Virginia stated it had no objections.

NHTSA explained in the NPRM that it expected implementation of electronic titling and odometer disclosure systems would occur slowly, and, for the foreseeable future, both paper and electronic title and disclosure systems would coexist. As evidenced by the petitions for approval filed with the agency, individual states are not likely to shift their entire titling and odometer disclosure systems from paper to electronic systems at one time, and it is inevitable that interstate vehicle sales will involve vehicles moving from one type of jurisdiction to another. The NRPM proposed adding two sections to 580.6 to address the issues posed by the co-existence of paper and electronic systems. Section 580.6(a)(4) proposed requiring that a prior paper title and odometer disclosure be copied electronically for retention by the electronic system state and that the paper document(s) be destroyed at the time they are converted to electronic documents. Further, the electronic copy of the paper title would be retained in a system allowing its retrieval for five years. Section 580.6(a)(6) proposed that states maintaining an electronic title and odometer disclosure system shall retain the capacity to issue physical titles meeting all the requirements of this part. Once a physical title is created by a state with an electronic title and odometer disclosure statement system, the electronic record must indicate a physical title has been issued and the electronic title and disclosure statement have been superseded by the physical title as the official title.

The proposal further provided that electronic title and odometer disclosure systems shall record the date on which the physical title was issued and record the identity of the recipient of the physical title as well as the owner(s) named on the physical title. Two commenters, PCI and ESRA, supported these proposals without substantive comment. AAMVA noted that use of physical documents should be strongly discouraged in an electronic disclosure jurisdiction, but exchanging electronic and paper title records will be necessary. According to AAMVA, an active electronic title record and an active paper title cannot coexist. However, AAMVA noted jurisdictions cannot reliably ensure the destruction of

existing physical documents. These paper titles can be invalidated and the record superseded (as is current practice), but the new jurisdiction of record has no control over whether a transferor or transferee destroys the document. AAMVA also stated that because states are currently required to perform a title check prior to title transactions to determine if they have the most current title issued, states already have a process in place to validate that they are not dealing with an out-of-date or superseding title.

NADA concurred in the need for a process to convert "official" e-odometer records to "official" paper records and that only state or their authorized agents should be allowed to do so. In NADA's view, records of such conversions should be retained. Florida stated the proposed rules mirror its current practices as it scans and stores paper titles electronically and converts e-titles to paper for various reasons. According to Florida, it presently stores the history of title conversions from one form to another and invalidates the inactive title while paper titles are printed by Florida or an authorized entity. Florida, nonetheless, requested NHTSA not dictate that only states can print titles in the event future developments allow for other means of producing these secure documents. Florida also noted it would be difficult for states to ensure paper titles are destroyed after conversion to electronic titles and suggested that the rule provide that a prior physical title be destroyed or otherwise rendered void. California noted its procedure for converting paper titles to electronic calls for the paper title to be scanned and stored, and the original is destroyed. However, California felt the five-year storage requirement proposed in § 580.6(a)(4) is burdensome and suggested a four-year requirement. Virginia supported the proposals without substantive comment while Texas also stated the proposals mirrored its current practice. However, Texas also noted jurisdictions cannot control the submission of physical documents and would have to prevent issuance of title until such time the documents were surrendered to comply with the proposals.

An individual providing comments, Lopatka, stated NHTSA should alternatively consider adopting a system by which individual titleholders may create official physical copies of their own records from the electronic system. Mr. Lopatka conceded that allowing individuals to print their own records from the electronic system might reduce the level of security associated with the transaction to some degree but that

allowing them to do so would lessen burdens on states implementing electronic title and disclosure systems.

Based in part on its experience in processing petitions for approval of alternative disclosure schemes, NHTSA also proposed a new § 580.6(a)(5) giving jurisdictions with electronic title and odometer disclosure systems the option of providing vehicle owners with a paper record of ownership, including odometer disclosure information, so long as the document clearly indicates it is not an official title or odometer disclosure for that vehicle. Almost all commenters supported this proposal provided the document issued could not be employed as a counterfeit title. ESRA noted providing a non-negotiable copy of a paper title is a standard practice in some states supporting electronic titling programs today. NADA concurred with the proposal, recognizing that some dealership customers may wish to be provided with paper printouts. NTSF supported the proposal as this practice is currently used in some states with electronic lien and title programs but stated it should not be required. California and Florida also agreed with the proposal if it remains permissive. Virginia opposed using the language “paper record of ownership” because of potential fraud and suggested the term “title receipt.” Texas also supported states having this option provided issuing such a document was discretionary. Lopatka argued against allowing states to provide an unofficial ownership document, stating that merely requiring clear disclosure that the physical copy is an unofficial record may be insufficient to prevent this fraud and abuse.

The agency’s NPRM observed electronic title and odometer disclosure systems have the potential to reduce opportunities for odometer fraud by eliminating or reducing the use of paper documents in vehicle transfers. Nonetheless, the agency’s experience in processing petitions seeking approval of alternative odometer disclosure schemes demonstrated states may choose to implement electronic title and odometer disclosure systems in ways that will still require the limited use of paper documents. To ensure the security of transactions employing such documents, the NPRM proposed a new section, § 580.6(a)(7), requiring any physical documents used to make odometer disclosures for entry into and electronic title and odometer disclosure system to comply with the existing requirements of part 580. AAMVA agreed to the extent that continued use of physical documents is necessary in an electronic system, any physical

documents used must comply with regulatory requirements. NADA did not object to the proposal while California supported it without substantive comment. Arizona observed the requirements in the proposed §§ 580.5(c) and 580.6(a)(7) appeared to conflict and suggested that § 580.6(a)(7) take precedence and § 580.5(c) be reworded to eliminate the conflict. Texas stated that it fully supported this proposal, particularly as it would apply to powers of attorney but encouraged NHTSA to review other sections of its proposed rules because the agency believes other sections may imply such a scenario is not permissible.

Another issue addressed in the NPRM is the need to ensure odometer disclosure records converted from paper to an electronic form do not lose their value in that process. The NPRM therefore proposed such a conversion must maintain and preserve the security features in the document so alterations or modifications can be detected in the electronic version. The proposal, found in § 580.6(a)(8), also required that scanning be made in color at a resolution of 600 dpi.

Comments received in response to this proposal were unanimously opposed to the requirement that scanning be conducted at 600 dpi, and some commenters noted that scanning or imaging need not be in color. Dealertrack stated that a 600 dpi and color scanning requirement are well beyond current industry standards and should be reconsidered. NADA opposed the proposal as unduly burdensome on states and their agents. In NADA’s view, NHTSA should adopt a standard that requires no more than a black and white scan of 300 dpi PDF, TIFF, or equivalent. OADA recommended NHTSA not impose any minimum technological standards and instead leave that to the discretion of the individual state motor vehicle administrators. AAMVA contended a 600-dpi scan is excessive, and the NPRM provides no clear evidence or case study to support a high-resolution standard. According to AAMVA, a 600-dpi resolution unnecessarily increases the file size to the point that storage and transmission of title histories sent via email become overly expensive and burdensome. This burden, AAMVA’s view, provides no meaningful benefit as documents are but one part of establishing an odometer fraud case.

ESRA stated NHTSA should take a technology and standard-neutral position and allow states to choose reasonable standards. NTSF recommended NHTSA abandon scanning and resolution requirements

because of variations in document and font sizes among states. In NTSF’s view, states already have appropriate scanning resolution requirements, and NHTSA should leave this issue to state regulation. Arizona stated scanning documents at the NHTSA proposed resolution would adversely affect system performance and impose data storage costs and recommended states retain the ability to balance between system performance and scanned image quality. In Arizona’s view, any requirement should be limited to requiring detail sufficient to preserve the features of the original document. California also strongly disagreed with the proposal, contending the standard be left to states and not set above 200 dpi in black and white. Florida echoed the comments of Arizona and California, citing greatly increased storage, transmission, and scanning costs.

According to Florida, color scans are not optimal, and NHTSA should allow states to set their own scanning standards. Texas observed jurisdictions have a strong interest in the accuracy of title records and bear the responsibility for assuring their validity. According to Texas, scanning at the proposed resolution in color produced a loss of visibility to security features, such as the “VOID” watermarks, which are apparent at lower dpi black and white scans. Texas also noted NHTSA did not impose a dpi requirement when approving its petition for alternative disclosure, and Texas had been employing a minimum 200 dpi standard with good results. Texas urged striking any dpi requirement and allowing jurisdictions to ensure the security of their process, particularly as the cost of scanning at the NHTSA-proposed resolution would be prohibitive. Virginia also opposed requiring 600 dpi color scans for cost and feasibility reasons. In Virginia’s view, the regulation should not set a dpi standard but noted 300 dpi is reasonable. Lopatka urged the agency to more fully consider if states must scan physical titles with sufficient resolution to preserve security features or if preserving details such as the clarity of the titleholder’s signature is sufficient.

The comments submitted by Texas also suggested adding two more subsections to 580.8. One of the subsections would provide an electronic means for completing a transaction where the transferor holds a physical title that has been lost. According to Texas, adding this paragraph, which would authorize the transferor to execute an electronic or physical power of attorney, would save costs and reduce fraud because it would eliminate the

need for the transferee to obtain a physical title, only to transfer it electronically and make disclosure electronically. The second addition put forward by Texas would explicitly state that separate reassignment documents may not be used with an electronic title. Texas explained that because electronic titles have no physical limitation on the number of reassignments that can be incorporated into an electronic title, a separate reassignment document is not needed and should not be allowed. Texas also argued allowing physical reassignment documents with electronic titles could result in increased odometer fraud.

7. Leased Vehicles

Section 580.7 of part 580, *Disclosure of odometer information for leased motor vehicles*, establishes requirements for odometer disclosure for vehicles which, because of their leased status, are physically controlled by a lessee while the lessor holds the title. Because these vehicles are frequently transferred by the lessee to a transferor, this section establishes special procedures to ensure mileage information is provided by the lessee to the lessor. The lessor then executes the odometer disclosure on the title using the information provided by the lessee unless the lessor believes the lessee's mileage information is inaccurate. As NHTSA explained in the NPRM, NHTSA is not aware of any reason why electronic disclosures could not be made for leased vehicles, and the NPRM proposed revisions which would allow lease disclosures to be made on paper documents or electronically. Although the proposal did not require any action on the part of states or other jurisdictions to accommodate electronic disclosures for leased vehicles, the NPRM asked for comments on whether such a requirement should be implemented.

Commenters submitting responses to this portion of the NPRM rejected any suggestion that states or other jurisdictions be required to make any accommodation for leased vehicle disclosures. NTSF recommended this requirement be left up to states implementing electronic odometer system. According to NTSF, specific regulations to be implemented by states may be needed for electronic processing of the practice by which a lessor can obtain an odometer disclosure from the lessee. NIADA also stated electronic disclosures for leased vehicles should be left to states to develop in conjunction with the leasing companies operating in their jurisdiction. NADA did not address the role of states but supported the NHTSA proposal to

enable electronic lessor-lessee notices and electronic lessee-lessor disclosures. NADA also stated minimum requirements for these end-of-lease situations should be established because leasing companies have been a significant source of odometer fraud. AAMVA opposed involving states in transactions made between the lessee and the lessor and that a state's only involvement should be to accept completed documents. AAMVA also noted the term "physical document" used in the proposed amendments could create confusion as the proposed definition of this term included a title, reassignment document, or power of attorney. California also indicated leased vehicle transactions should only involve lessors and lessees. Florida noted states were not involved in the leased vehicle disclosure process and should not be compelled to participate now.

As observed by AAMVA, Florida also questioned the use of term "physical document" in the proposed amendments. Texas found the proposal to be particularly concerning. Texas rejected any role for states in this process but observed the use of term "physical document" and language stating leased vehicle disclosure be made within an "electronic document" implicated states (and other title issuing jurisdictions) because of the specific definitions NHTSA proposed for these terms in the proposal. In addition, Texas recommended allowing the lessors to comply with this section without imposing the security requirements proposed by NHTSA as doing so would provide a disincentive to adopting an electronic process. Virginia, unlike any other commenter, supported including electronic disclosures of leased vehicles as part of the electronic system established by a jurisdiction but did not elaborate further.

8. Document Retention

Sections 580.8 and 580.9 include requirements for odometer disclosure record retention by motor vehicle dealers and distributors and by auction companies, respectively. The NPRM proposed to amend these requirements to include electronic copies or electronic documents as an acceptable form of record. The proposal also added a requirement in 580.8 that dealer electronic records must be retained in a format which cannot be altered and which indicates any attempts to alter it.

The comments addressing this proposal questioned whether extending the paper record requirements for dealers and auction houses would be necessary in jurisdictions with

electronic title and odometer disclosure systems because these jurisdictions would be required to securely store electronic title and odometer disclosure data. Some commenters also questioned the accuracy of some of the terms proposed in the amendments. California stated the proposals are not needed because it maintains the titling record of a vehicle, to which only authorized access is permitted. Florida supported the proposed amendments but asked NHTSA to reconsider the storage or retention of paper records altogether given state recordkeeping. Texas argued that where jurisdictions facilitated the electronic odometer disclosures needed to create a new title, it would be burdensome for dealers to retain this information. According to Texas, dealers would have to extract the information or require the jurisdiction to provide it, and Texas perceived no benefit from this burden. Texas also contended the requirements for auctioneers proposed by NHTSA were overbroad, particularly in requiring secure storage as auctions only need to log transactions and not store odometer disclosures. Texas also observed that use of the term "physical document" in the proposal was inappropriate as that term is defined by the NPRM. In contrast to other states, Virginia stated records kept by motor vehicle dealers and distributors and by auction companies should be held to the same standard as records maintained by state vehicle administrators. As did California, Florida, and Texas, AAMVA stated the proposed requirements were unnecessary as states systems would provide the required security protocols and data. NADA noted the proposed language changes to § 508.8(a) should similarly be made to paragraphs (b) and (c). In NADA's view, NHTSA should clarify that where electronic records are kept in a centralized state system, the dealer record retention requirements are satisfied to the extent those records are reasonably accessible from their primary place of business. Allstate's comments stated record retention requirements are needed to support the detection and prosecution of odometer fraud but did not elaborate further.

9. Power of Attorney

Prior to this final rule, part 580 contained secure paper power of attorney provisions in §§ 508.13, 508.14, and 508.15 facilitating transactions in cases where the title was lost or physically held by the lienholder. These power of attorney provisions provide an exception to the rule that a single person cannot execute an odometer disclosure as both transferor and

transferee by allowing appointment of that individual to execute odometer disclosures on behalf of the transferor when acquiring the vehicle under § 508.13, and, if transferring the vehicle, on behalf of the new transferee under § 508.14.

The NPRM proposed amending § 580.13(a) and (b), to allow an individual with a vehicle titled in an electronic title state to use a power of attorney to sell a vehicle in a paper title state. Further, because the agency believed a power of attorney or reassignment documents would not be needed in electronic title jurisdictions, the NPRM proposed adding the word “physical” to certain phrases in § 580.13(f), § 580.14(a), (e), and (f), and in § 580.15(a). Along with proposing use of a power of attorney for interstate transfers from electronic to paper jurisdictions, NHTSA specifically requested comments on whether this power of attorney would be necessary in an electronic odometer system for intra-state transfers. The NPRM also sought comment on the feasibility of an electronic power of attorney as well as the implications of variations among states in implementing the power of attorney.

The comments submitted in response to this section in the NPRM identified several issues related to the proposed amendments. Several commenters observed the NPRM’s view that a power of attorney would be useful in interstate transactions from an electronic title state to a paper state was flawed. Commenters also offered varying degrees of support for the continued use of the power of attorney in electronic title jurisdictions while others advocated both electronic and paper versions of the power of attorney in jurisdictions with electronic title and odometer systems. Other comments addressed the restriction that the power of attorney could be used only when a title is lost or physically held by a lienholder in the context of contemporary electronic title and lien schemes. Similarly, the status of an electronic title made unavailable because of technical failures led others to advocate expansion of the power of attorney provision in such an instance. Others advocated expanding the power of attorney provisions to facilitate vehicle financing.

States generally argued against restricting power of attorney use to jurisdictions without electronic title systems, advocated electronic and paper power of attorney use and observed that a power of attorney, without more, would not allow completion of an interstate vehicle transfer from an

electronic title jurisdiction to a paper title jurisdiction. California agreed electronic disclosure would generally eliminate the need for the power of attorney but urged that the rule should not restrict its use only to a physical document. In California’s view, a power of attorney, by itself, is not sufficient to sell a vehicle or otherwise convey ownership and that completing an interstate sale from an electronic to paper jurisdiction would also require a secure title printed on secure paper, with an application for a duplicate title on which the disposition of the original paper title is attested. Florida also agreed the secure power of attorney should not be needed in an electronic title environment but that paper titles will continue to be in use for some time, and the secure power of attorney should remain available to states with e-title systems. According to Florida, electronic powers of attorney would also be needed, even if not used frequently. Oregon noted there is still an issue with state-to-state transactions and will continue to be until all states implement an electronic process and asked if the proposal eliminated the use of the power of attorney with electronic titles. Virginia’s comments voiced the same concerns and observations raised by California and Florida while also noting the NPRM does not address how states deny accepting documents from other states.

Texas strongly advocated allowing use of the power of attorney with any electronic title, whether within the same jurisdiction or not. Further, Texas observed electronic lien systems and electronic titles raise the question of whether the power of attorney can be used under the existing restriction that the power of attorney can be used only when a title is lost or physically held by the lienholder. As the title is neither lost or held by the lienholder but resides within state electronic title systems, a transferor must either pay off the loan to release the title prior to the transfer or must use the power of attorney to allow the transferee to complete the odometer disclosure. Texas also urged the power of attorney be permitted in jurisdictions with electronic titles and that electronic powers of attorney be allowed as well and requested there be no limitation to whom a jurisdiction can provide a secure power of attorney. Texas strongly encouraged NHTSA to amend § 580.13(f), which specifies a power of attorney is void if the odometer reading on the power of attorney is lower than on the title. According to Texas, this rule does not address situations where the power of

attorney contains a statement from the transferor that the odometer reading is known to be in excess of mechanical limits or is not actual. The preceding circumstances, where the odometer reading on the power of attorney may be lower than that on the title should not, in the view of Texas, void the power of attorney. Texas also asked that this section allow for electronic submission of an original power of attorney by scanning or imaging. As the power of attorney is useful only for a single transfer, Texas requested this change not be accompanied by a requirement that the jurisdiction confirm destruction or invalidation of the document. Finally, Texas requested § 580.16 be amended to specify that a copy of a power of attorney be made available upon request rather than returned and that NHTSA replace the term “purchaser” with “transferee” for consistency.

California, Texas, and AAMVA observed the current language in § 580.13(f) states “. . . [i]f the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the *dealer* shall not complete the mileage disclosure on the title.” (emphasis added). These three commenters all observed that because the dealer does not complete the disclosure, the reference to “dealer” in § 580.13(f) should be changed to “transferee” for consistency.

AAMVA also noted the power of attorney process described in the NPRM would not allow completion of a transfer of a vehicle from an electronic title state to a paper title state without the corresponding title. In AAMVA’s view, a power of attorney is or would be the appropriate document to transfer ownership. These transactions should be performed on a secure physical title like they are today. AAMVA also urged a secure power of attorney, whether physical or electronic, is needed when the title is electronic because a power of attorney may still be necessary in intrastate transactions within an electronic titling state in instances where the buyer or seller does not have the ability to complete the transaction electronically. As did Texas, AAMVA observed the power of attorney regulations did not provide relief when an electronic title cannot be physically held, and there is no title available for the seller to sign.

Comments provided by the dealer and auctioneer communities supported the continued use of the power of attorney in electronic title and odometer disclosure jurisdictions as well as the availability of both electronic and

secure paper versions of these documents. Additionally, support was also expressed for expanded application of the power of attorney beyond situations where the title is lost or physically held by a lienholder.

NADA noted the power of attorney should be unnecessary for electronic transfers but stated that there will be situations where a power of attorney will continue to be necessary. Therefore, NADA fully supported the use of a power of attorney in situations involving electronic state to physical state transactions when it is impractical for sellers to obtain physical copies of their electronic titles. In addition, NADA stated NHTSA should recognize that physical state to electronic state transfers may also involve lost paper titles or paper titles held by lienholders, and electronic disclosure states should have to provide for a power of attorney. The organization gave the example of a paper state trade-in customer transferring to an electronic state dealership needing to use the power of attorney if the title is lost or held by a lienholder. NADA urged amending §§ 580.13 and 580.14 to accommodate both physical and electronic powers of attorney or, at the least, NHTSA allow “electronic states” to issue physical powers of attorney.

NIADA offered similar comments and supported continued availability of the power of attorney as well as electronic versions of the document. Dealertrack asked the agency to recognize paper and electronic titles and odometer disclosures will both be used for many years and the availability of the power of attorney is essential for commerce. The company also advocated allowing an electronic power of attorney. Copart stated powers of attorney will continue to be necessary for intra-state transfers, particularly if the electronic system is not available during a catastrophic event. IAA asked if NHTSA intended for power of attorney forms only to be submitted to paper title states if their use was not allowed in electronic title and odometer disclosure states. NAAA requested NHTSA consider expanding the availability of the power of attorney to situations where technical problems in an e-title state made electronic titles unavailable. In NAAA’s view, a power of attorney should be available to allow transfers to occur during the interval when the e-title is inaccessible.

Lenders and their affiliates also supported broad availability of the power of attorney. NTSF supported the continued use of the power of attorney, including electronic systems allowing for electronic power of attorney forms. CUCTX requested § 580.13 be amended

to permit the use of an electronic power of attorney, even when the title is still a physical document. According to CUCTX, if parties to a transaction execute a power of attorney electronically refinancing a vehicle would be expedited. Similarly, CUCTX encouraged NHTSA to amend § 580.13 to expressly provide that financial institutions may be appointed as an agent of either the transferee or transferor to execute documents in these transactions. HCUA also urged the agency to allow that a lienholder may serve as agent of both transferor and transferee and execute the statements on their behalf. In HCUA’s view, this is necessary for credit unions involved in the financing of private sales of automobiles. NAFCU also noted the agency should look for areas within part 580, especially § 580.13, to identify how the regulation can be amended to enable the efficient performance of a financial institution’s essential duties when facilitating a vehicle sale.

Therefore, NAFCU recommended the regulation be amended to clearly specify that a financial institution can serve as an “agent” for the parties in the transaction.

ESRA’s comments acknowledged that an electronic odometer disclosure system would allow most e-titling transactions to occur without a power of attorney. ESRA further stated an odometer disclosure by power of attorney can be made electronically. According to ESRA, if a state requires notarization of such a power of attorney, electronic notarization could be applied, and the form signed electronically, as allowed by ESIGN or the Uniform Electronic Transactions Act (“UETA”).

10. Exemptions

Section 580.17(3) exempts any vehicle which is more than 10 years old from the odometer disclosure requirements. Because the average age of the United States vehicle fleet has been trending upward, the NPRM proposed raising this exemption to 25 years. NHTSA also requested comments on whether this exemption should be eliminated.

The comments responding to this proposal were mixed, with most states supporting the proposal or remaining neutral with some concerns about increased costs. Lenders, insurers, and dealer-related organizations generally opposed the proposal while other groups aligned with consumer protection strongly supported it. Many of the commenters also exhibited concerns about the practicalities of how disclosures would be made and mileage reported when the exemption is changed given the large numbers of

vehicles whose titles may already have had their odometer disclosures marked as “exempt” instead of having their mileage reported as set forth in § 580.5(e).

Among the states providing comments to this proposal, California supported raising the exemption to 25 years but not eliminating it. California suggested implementing the change incrementally at one year intervals until the 25-year threshold it attained. Florida noted the NPRM did not discuss why 25 years was proposed and questioned how this could be implemented. Oregon stated changing the exemption from 10 years to 25 years would require computer system reprogramming and result in a higher rejection rate of transactions, which would increase costs. Texas strongly supported proposed change to 25 years or eliminating the exemption. According to Texas, eliminating the exemption would simplify processing and technological requirements. Texas observed NHTSA would have to address the issues raised by currently “exempt” vehicles having no mileage recorded.

According to Texas, a solution to the problems raised by implementation would be to make the change effective when the regulation becomes effective and then phase in the applicability year-by-year over the next 15 years. Alternatively, Texas suggested vehicles exempt at the time of promulgation be grandfathered unless other evidence of false mileage exists. Virginia simply stated it does not oppose raising the exemption to 25 years or eliminating the exemption. AAMVA supported the extension of the exemption beyond 10 years, noting 25 years is consistent an antique vehicle classification in many jurisdictions. AAMVA also noted some states discontinue the issuance of titles at a certain age, such as 15 years. This, AAMVA noted, would leave no title available to carry the odometer disclosure. AAMVA expressed concern on how the change in the exemption would be implemented. At the least, AAMVA recommended any vehicle that does not reflect “actual” mileage in the title record be precluded from obtaining an “actual” mileage brand on the title even if this mileage is disclosed later. Beyond that, AAMVA recommended the rule change phase-in the 25-year exemption, by first applying the requirement to vehicles under 25 years old that are currently subject to odometer reporting.

NADA opposed the proposed change as it would greatly increase disclosure and recordkeeping burdens for transferors, transferees, and states, with no demonstration by NHTSA that vehicles 11 to 25 years-old have become

a “hot bed” for odometer fraud. The organization argued NHTSA could revisit the issue in the future after electronic titling and odometer disclosures provide data on older vehicle odometer fraud but should not act until NHTSA can show changing the exemption will significantly reduce odometer fraud. In NADA’s view, this proposal runs contrary to NHTSA’s time-honored and well-deserved reputation for being a data driven agency. Moreover, NADA noted the proposal fails to provide for any transition period to account for currently exempt vehicles. In contrast to NADA, dealer association NIADA supported the increase of the exemption to 25 years but urged NHTSA to “grandfather” currently exempt vehicles.

Copart opposed the proposal as an unreasonably high threshold given the average vehicle age is 11 years. Copart also questioned the benefit to be realized in relation to costs imposed by the change on state title systems. Auctioneer IAA argued that mileage as an indicator of condition and value do not apply to older cars or factor into the decisions of those who buy them. According to IAA, the proposed change is not warranted, and the costs of the expansion far outweigh any benefit.

Insurer representative AIA opposed the proposed change arguing the vehicles subject to theft and/or cloning are most often late model high-value vehicles. In AIA’s view, the age of vehicles is simply not reason enough to change the existing exemption without a thoughtful discussion of the underlying need to do so. PCI argued against the proposed change stating the value of older vehicles is driven primarily by the appearance and condition of the vehicle, not its mileage. Further, PCI noted the odometers on older vehicles may not be functional, further complicating the process and providing little if any benefit to a purchaser of an older vehicle. PCI suggested if NHTSA believes that a change is necessary, the threshold for the exemption should not be higher than 15 years.

Lender affiliated organization NTSF supported changing the exempt vehicle age from 10 years to 25 years. The NSVRP, a non-profit consumer organization, stated there is no justification to retaining the 10-year recording limit. In NSVRP’s view, the older the vehicle, the more likely it is there will be risks to the public from non-disclosure of odometer discrepancies. The organization noted it is likely that most vehicles now on the road are exempt and therefore not

covered because of the 10 model years of age cut-off for required reporting. NOTFEA urged NHTSA to adopt the proposal. NOTFEA observed the average vehicle age is now 11.5 years and that operation of vehicles older than 12 years old is expected to increase 15% by 2020. Further, NOTFEA cited a survey indicating drivers were keeping and driving their vehicles more than 100,000 miles and planned on continuing to drive them until 200,000 miles and/or until they stopped running. Participants planned on keeping their vehicles more than 12 years.

According to NOTFEA, a recent odometer fraud investigation revealed a dealer rolled back the odometers on 547 vehicles, and only 134 were not exempt. NOTFEA stated the exempt status of vehicles gave the dealer an opportunity to reduce the mileage and that this dealer removed approximately 26 million miles from the odometers of all the exempt vehicles he sold. According to NOTFEA, this accounted for an approximate fraud loss of \$1.2 million and approximately 26 million miles rolled back on 300 vehicles. NOTFEA also offered examples of similar cases involving exempt vehicles. To address the mechanics of implementing the change to the exemption threshold, NOTFEA suggested when the change becomes effective, NHTSA should make it apply only to vehicles less than 10 years old on the effective date.

11. Miscellaneous Amendments

The NPRM proposed various amendments updating the agency’s address, removing obsolete text, and conforming the petition for alternative disclosure schemes requirements to the other proposed amendments. These included inserting a new address in §§ 580.10(b)(2) and 580.11(b)(2), deleting the text in § 580.12, and amending § 580.11(a). One commenter, NADA, indicated they supported these proposed amendments.

12. Other Comments

Several commenters addressed issues unrelated to specific proposals in the NPRM as well as other odometer disclosure concerns and issues. Some of these comments related to terms used within part 580. Texas suggested the term “purchasers” in § 580.2 be changed to “transferees” because not all transfers of ownership requiring an odometer disclosure are the result of a purchase and “purchaser” is not defined in part 580. Texas also recommended changing the language “at the time the lessors transfer the vehicle” in § 580.2 to “at the time the lessees return possession of the vehicle to the lessors” to more

accurately fix the time when a lessee must make disclosure. AAMVA recommended NHTSA remove references to the term “form” as it relates to electronic odometer disclosure and electronic titles because such disclosures are not made on a paper-based “form.”

AAMVA also asked for clarification on when a power of attorney may be used in conjunction with odometer disclosure. Specifically, AAMVA wanted to know if use by third parties such as lienholders, title services, and auctions signing a non-secure power of attorney permissible. ESRA noted none of the proposed rulemaking provisions address “end of life” of vehicle title processing. In ESRA’s view, NHTSA should consider if an odometer disclosure is needed once a vehicle is declared a total loss, and, if so, create an electronic disclosure process for such vehicles.

The NSVRP urged NHTSA to make whatever changes were needed to ensure odometer readings were reported to the correct jurisdiction at every transfer, including dealer-to-dealer transfers. According to NSVRP, gaps in reported mileage occurring when reassignment documents or a power of attorney are used create opportunities for title skipping and false odometer disclosure statement.

Auctioneer representative NAAA argued the proposed rule does not adequately address U.S. and international export rules. According to NAAA, U.S. Customs and Border Protection regulations require vehicles titled domestically be exported with the original certificate of title or a certified copy and destination countries may require original titles for importation. Because the proposed rule requires destruction of paper titles when those titles are converted to electronic titles, NAAA is concerned domestic and foreign customs officials may not be prepared to work with electronic titles and disclosures and that delays in processing requests to create official paper titles may harm vehicle exporters.

Two commenters, Texas and AAMVA, addressed the petition process for establishing alternative odometer disclosure schemes. AAMVA asked that the final rule ensure the petition process remains available while Texas requested § 580.12, which the NPRM proposed to remove and reserve, be used to provide the parameters for rescinding a grant of approval.

Finally, two lender organizations, NTSF and HCUA, recommended electronic odometer systems provide the means for lienholders to electronically

receive the mileage reading for vehicles they intend to finance.

III. Final Rule and Response to Comments

A. Summary of the Final Rule

This final rule adopts the amendments proposed by the NPRM for §§ 580.1, 580.10, 580.11, and 580.12 without substantive change. Minor changes from NPRM proposals include replacing “his” with “their” to achieve gender neutrality throughout part 580 and establishing a definition of “jurisdiction” that encompasses states and territories to replace the term “state” wherever formerly used in part 580. Also for clarity and accuracy, § 580.2 is amended to better describe the status of a vehicle upon termination of a lease, and the term “purchasers” has been replaced with the more accurate and less restrictive term “transferees.” Consistent with the former amendment, the term “dealer” in § 580.13(g) has been changed to “transferee” to reflect that those receiving ownership are not just dealers.

The NPRM proposed facilitating adoption of electronic title and odometer disclosure systems by adapting the existing physical document requirements of part 580 to a broadly defined class of electronic documents. In response to comments criticizing this approach, the final rule contains new definitions for “Access,” “Electronic Power of Attorney,” “Electronic Title,” “Jurisdiction,” and “Printed Name,” and revises the definitions of “Original Power of Attorney,” “Sign or Signature,” and “Transferor.” These more precise definitions are applied throughout part 580 to allow odometer disclosures with both physical and electronic titles and powers of attorney. This final rule also authorizes use of an electronic power of attorney and, provides for electronic reassignments when a transferee is given a paper title by the transferor but does not take title to the vehicle. The definition of “Sign or Signature” includes an electronic signature employing NIST level 2 authentication system or its equivalent, instead of NIST Level 3. The regulations now also more clearly allow authorized modifications to electronic records and recognize that electronic titles and odometer disclosures may be held in a variety of formats. The final rule retains our proposal that an individual signing a disclosure on behalf of a business must identify himself and the business. Also, because technologies such as “pen pads” may be used in electronic titling and odometer disclosure systems and that paper documents may, in some

jurisdictions, be employed in an electronic odometer disclosure system, the final rule abandons the NPRM’s proposal to delete printed names from electronic transactions. This final rule also substantially relaxes the proposed requirements for scanning documents to allow document conversion in black and white at a resolution of 200 dot per inch (dpi) and recordkeeping requirements in §§ 580.8 and 580.9 provide more options for dealers and relax the rules for auctions. NHTSA now promulgates provisions allowing both electronic and paper powers of attorney if a title is unavailable to a transferor because the title is lost, physically held by a lienholder, electronically controlled by a lienholder or when an electronic title is inaccessible. The exemption rules in § 580.17 are now set so vehicles that are 20 years old or older are exempt from mileage reporting. The final rule also now explicitly establishes how this exemption will be applied to different model years.

B. Supplemental Notice of Proposed Rulemaking (SNPRM)

As noted above, NADA and NAAA, suggested NHTSA issue an SNPRM prior to issuing a final rule while NAMIC and Texas stated NHTSA might consider delaying this final rule. NADA felt that an SNPRM would help to provide more comments and information about interstate transfers. NAAA asked for an SNPRM to explore the effect of any delays inherent in producing paper titles on exporting vehicles. Texas urged delay in issuance so the agency could craft clearer language. NAMIC thought delay would give a greater opportunity for NHTSA and state officials to forge a national electronic titling and odometer disclosure system.

Given the amount of time that has passed since the issuance of the NPRM and the extensive changes made to the agency’s original proposal as detailed elsewhere in this notice, NHTSA does not believe that an SNPRM is needed or would provide any added value in addressing the concerns voiced by these commenters. NHTSA shares NADA’s concerns about the challenges posed by interstate transactions and has drafted the final rule to provide solutions. Additionally, the agency’s approach is to provide as much flexibility as possible while protecting the integrity of mileage disclosures. This approach will allow states to adopt and develop means for addressing different transactions in what will certainly be an evolutionary process. Similarly, the agency believes NAAA’s concerns would not be

addressed by issuing an SNPRM. States have an interest in meeting the needs of citizens and resident businesses and will likely develop methods for providing paper titles efficiently. The commenters urging delay, Texas and NAMIC, raised entirely different issues. Texas urged delay so better language could be developed. The extensive revisions made to our original proposal signal NHTSA’s strenuous effort to do just that. NAMIC’s loftier goal, to delay issuance until a national titling system could be developed, would require significant and unacceptable delay in issuing this final rule.

C. Scope of the Final Rule

In considering the breadth of the proposals in the NPRM and the amendments promulgated in this final rule, NHTSA remained mindful of the direction given by Congress in directing that the agency “prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically.” (Section 31205, 126 Stat. 761, Pub. L. 112–141 (2012)). NHTSA notes this direction was unaccompanied by any suggestion that a national electronic title system be created, however laudable that goal may be. Moreover, in enacting section 24111 of the FAST Act authorizing states to create electronic odometer disclosure systems without NHTSA’s approval until the effective date of this final rule, Congress also did not offer any indication it supported the creation of a national title system by expansion of NMVTIS or other means. (Section 24111, Pub. L. 114–94 (2015)). However desirable a national electronic title or odometer disclosure infrastructure might be, the agency concluded it has not been tasked with creating such a system. Accordingly, this final rule does not answer to the sentiments expressed by AIA, NAMIC, and Texas that this rulemaking action create such a system.

A secondary scope issue exists to the extent the NPRM contemplated that NHTSA take two approaches to regulating electronic odometer disclosures. As reflected in the NPRM’s request for comments, one approach would be to draft a set of detailed and comprehensive regulations creating rules governing technical aspects of system security, identity authentication, interstate communications, and the mechanics of executing transfers. Alternatively, the NPRM posited the agency take a less prescriptive approach aimed at preserving the essential characteristics of odometer disclosure and providing states with the latitude needed to develop electronic systems consistent with their environment. On

the whole, commenters strongly favored NHTSA adopt this less prescriptive approach, noting that rapidly changing technologies and traditional rulemaking are incompatible, that overly restrictive rules would preclude development of electronic systems, and that states have a deeply rooted fundamental interest in erecting and maintaining electronic titling and odometer disclosure systems that are secure, functional, and efficient. The agency concurs in these assessments and believes this less restrictive approach is consistent with the brevity exhibited by Congress in directing the promulgation of this final rule.

D. Definitions

The definitions in this final rule differ significantly from those proposed in the NPRM and remedy some significant shortcomings in our earlier proposal. Commenters identified many issues created by the proposed definitions. In posing the terms “Electronic Document” and “Physical Document” our proposal apparently created an impression that NHTSA’s vision of permissible electronic odometer disclosure schemes was limited to instances where the electronic record was nothing more than a scanned or imaged conversion of a paper document. Although it was not NHTSA’s intent to erect such a limitation, many commenters noted these terms were inconsistent with many existing systems where electronic titles and odometer disclosures are entries in a database. Commenters also correctly observed the types of documents encompassed by the respective definitions suffered from real or apparent conflicts with other sections of the proposed rules. Some comments addressed the proposed definition of “Sign or Signature” and noted it did not appear to encompass signatures made on “pen pads” or similar devices on which an individual’s physical signature is captured electronically. Two commenters, NADA and Texas, also suggested NHTSA modify the definitions section to ensure no doubt exists that the proposed rules apply to any jurisdiction that issues titles, including territories.

As noted, Texas included a “redline” version of the regulatory text proposed in the NPRM along with its substantive comments. Noting first that Texas has already implemented an electronic title and odometer disclosure system known as webDEALER consistent with NHTSA’s approval of its petition to implement alternative electronic disclosure requirements and thereby gained valuable experience in a new field, NHTSA examined the changes to

the regulatory language proposed by that state. After consideration of the proffered language and the comments addressing concerns about our proposals in this, and other, sections, the agency is incorporating many of the changes suggested by Texas into this Final Rule.

To distinguish between the ability to view an electronic title, power of attorney, and the electronic odometer disclosures incorporated into those records and the ability to modify those records, the final rule adds the definition of “Access” to § 580.3. This definition states “Access” is the authorized display and entry of information into an electronic title or power of attorney in a manner allowing modification of previously stored data. The definition further differentiates “Access” from the mere ability to view information without being able to modify it and distinguishes “Access” from the modification of a record resulting in creation of a new title. Adding this definition, in our view, also assists in alleviating concerns voiced by commenters that different rules proposed in the NPRM failed to adequately provide opportunities for legitimate error correction in secure records by authorized persons.

This final rule also disposes of the definition of “Electronic Document” by replacing the latter with new definitions of “Electronic Power of Attorney” and “Electronic Title.” The definition of “Physical Document” has been retained in modified form to establish the meaning of the term “Physical” as it applies to documents. The term is inserted where appropriate throughout part 580 to identify paper documents. Although the NPRM did not provide for an electronic power of attorney or propose to define one on the basis that such a document should not be necessary where electronic titles exist, NHTSA has reconsidered this position in response to the observations of some commenters that this tool will be needed as the transition from paper titles to electronic titles moves forward. The final rule definition simply states an electronic power of attorney is simply a power of attorney created and maintained in an electronic format that meets all the requirements of part 580. Our definition of “Original Power of Attorney” is amended in the final rule by adding the word “physical” for clarity. Similarly, the final rule definition for the electronic version excludes a scanned copy of a paper power of attorney. The final rule adopts a similar definition of “Electronic Title,” by specifying this record as created and maintained in an electronic

format and incorporating and odometer disclosure and reassignment process. For clarity, a scanned copy of a paper title is specifically excluded from the definition. Responding to other comments that the applicability of proposed rules should be clarified, the final rule also includes a definition of “Jurisdiction” as a state, territory, or possession of the United States. To ensure all governmental entities with the power to title vehicles are clearly encompassed by part 580, the final rule replaces the term “state” with “jurisdiction” wherever it appears. The agency also notes that the definition of “Jurisdiction” is singular and signals NHTSA’s decision not to establish security standards or similar regulations governing the exchange of electronic title information between jurisdictions. While it is most certainly the agency’s intent to ensure that odometer disclosures be properly executed in interstate and intrastate transfers, the manner in which jurisdictions may share electronic title information is beyond the purview of this final rule.

For electronic documents, the NPRM proposed eliminating the requirement found § 580.5(f) for a person completing an odometer disclosure to provide their printed name when transferring a vehicle. The agency viewed this requirement as superfluous when identity authentication requirements should ensure the information would be available. While NHTSA still believes this to be the case where a party would have to log on to a state website to conduct a transaction, electronic title and odometer disclosure schemes may involve other procedures. For example, our approval of Florida’s petition for alternative odometer disclosure requirements involved a system where individuals presented secure documents to a tag agent who entered the information into a state system. A variant of such a system might involve parties employing a pen pad to sign documents and enter information at a state or state-authorized facility after presenting identification. In such an instance, providing a printed name would be necessary to ensure identification in the future. Accordingly, the final rule is adding a definition of “Printed Name” to § 580.3 specifying what constitutes a printed name in both an electronic record and a physical document.

NHTSA’s proposed changes to the definition of “Sign or Signature” generated many comments. These comments were directed at the NIST authentication level proposed in the definition as well as more prosaic concerns about the definition not

adequately encompassing the full range of potential means for making an electronic signature. NHTSA's response to the NIST authentication issues is discussed below, and the agency now addresses the remaining issues.

The final rule leaves the language pertaining to physical signatures unchanged and adopts a two-part definition of electronic signature. In the first part of this definition, the language remains essentially the same as that in the NPRM aside from the NIST level requirement. The second part of the definition, which states that an electronic signature may include an electronic sign or process made before an employee or statutory employee of the jurisdiction, encompasses situations where an electronic title and odometer disclosure system may involve entering information and executing signatures at a state office or a state-authorized facility. NHTSA added this language to accommodate electronic title systems that may rely on physical signatures as part of the titling and odometer disclosure process.

E. Identity of Parties to a Motor Vehicle Transfer and Security of Signatures

As NHTSA observed in the NPRM, a physical signature is a unique mark linked to the person who made it. That unique mark may be tied to its maker even in the event a false name is used when the signature is given. In contrast, an electronic signature is anonymous. Confirming the identity of a person making an electronic signature is therefore dependent on factors other than the signature and requires a degree of corroboration. Because of concerns that the use of electronic signatures may impede the ability to identify persons making an odometer disclosure, NHTSA proposed the definition of "Sign or Signature" require that an electronic signature identify a specific individual. The NPRM also proposed this requirement be included in 580.6(a)(2), that proposed requirements for electronic transfers. This proposal was supported by those commenters choosing to address it, and NHTSA is adopting this requirement in this final rule.

The NPRM simultaneously proposed that in the context of an electronic odometer disclosure, the identity of the individual making or acknowledging the disclosure be verified using an identity authentication scheme meeting, or equivalent to, Level 3 as described in the NIST Special Publication 800-63-2, *Electronic Authentication Guideline*. This NIST guideline specified four different levels of identity assurance which are assigned according to the

level of risk posed by the potential failure to authenticate the identity of an individual using an electronic system for a transaction. These four levels of assurance (LOA)—with Level 1 being the lowest and Level 4 being the highest set out different authentication requirements. At Level 1 a user name and a password is sufficient verification and there is no identity proofing. The only assurance is the fact that the user can authenticate to the identity provider that some relationship exists between the two because the user provides a previously issued credential (username and password or cryptographic key). At Level 2, proof of identity requirements are introduced, requiring presentation of identifying materials or information. Both in-person and remote registration are permitted. For in-person registration the applicant must be in possession of a primary government photo ID (such as a driver's license or passport). For remote registration, the applicant submits the references of and attests to current possession of at least one primary government photo ID and a second form of identification. The applicant must provide to the registration authority at a minimum their name, date of birth, and current address or personal telephone number. At Level 3 proof of identity requires verification of identifying materials and information. Both in-person and remote registration are permitted. Level 3 requires the same evidence for issuing credentials as Level 2; however, at this level verification of the documents or references through record checks is required. The most stringent requirements, at Level 4, do not permit remote registration. Potential users must appear before a registration officer and provide two independent ID documents or accounts which must be verified. One of these must be a current primary government photo ID that contains applicant's picture, and either address of record or nationality (e.g. driver's license or passport).

Most of the commenters submitted views on this proposal, and all the commenters protested imposition of a NIST Level 3 requirement. As noted above, the comments in opposition stated the Level 3 standard was inapposite, costly, and overly restrictive. In specifying the NIST Level 3 standard, NHTSA intended to ensure the identities of those giving electronic signatures would be established to the extent necessary to ensure imposters did not execute or acknowledge mileage disclosures.

However, the agency has also re-examined the applicability of the Level 3 standard. The comments submitted in

response to the NPRM, directed toward this proposal and other proposed and potential security requirements, underscored the degree to which states are invested in providing secure electronic systems and, to a lesser but still sufficient degree, in verifying the identities of persons using those systems for vehicle transfers. The final rule, therefore, specifies the required level of authentication for confirming the identity of persons participating in electronic odometer disclosures shall meet the NIST Level 2 requirements or an alternative scheme providing an equivalent level of security.

Furthermore, since the June 2017 issuance of NIST Special Publication 800-63-3, *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C) superseded Special Publication 800-63-2, *Electronic Authentication Guideline*, the final rule has updated the reference to the new NIST guidance. While making this change, NHTSA is mindful the NIST guidelines, or similar guidance, will continue to evolve as technology advances. As discussed in the NPRM, advances in technology are likely to proceed at a faster pace than NHTSA's ability to revise and issue new rules. It is for this reason that the NPRM, as well as this final rule, specified that states need adopt a system meeting the specified NIST guideline or its equivalent. Moreover, in specifying that the NIST Level 2 standard or its equivalent must be met, NHTSA does not intend that states must update their systems to meet each new NIST guideline when it is issued. Instead, our expectation is that states will recognize the need to properly authenticate participants in odometer disclosure transactions and maintain a level of authentication security comparable to what the 2017 NIST Level 2 guideline establishes now. NIST guidelines can be met with currently available products on the market.

The final rule's definition of an electronic signature—"an electronic sound, symbol, or process"—is intended to encompass the full range of methods and technologies that may be employed to electronically sign a disclosure. Accordingly, a signature executed by writing on a pen pad or using a biometric such as a fingerprint, falls within an "electronic process" as described in the definition. While a biometric such as a fingerprint or retina scan might serve as a signature under the definition, NHTSA notes that employment of a biometric does not relieve a state or jurisdiction from having to meet the authentication

requirements in subsection (b)(i) of the definition.

F. Document or Record Security and System Security

The NPRM proposed amending § 580.4 to require electronic titles, powers of attorney, and reassignment documents to be maintained in a secure environment preventing unauthorized modification and recording when records are created, accessed, altered or unauthorized attempts to modify them are made as well as the date and time any attempt is made to alter the documents and any alterations are actually made in the records. The NPRM explained NHTSA might consider specifying security standards for these systems and requested comment on doing so. Commenters supported the proposed changes on the condition the final rule take adequate steps to ensure the final rule allowed authorized changes to electronic records to correct errors. One commenter, Virginia, objected to the requirement that unauthorized attempts to alter or modify records be tracked as the proper response in that event is to deny access and not create a record. Commenters overwhelmingly supported NHTSA's tentative decision to not issue security standards for overall system security.

The final rule adopts the language proposed in the NPRM with a small number of modifications. The heading for § 580.4 is changed to make it clear that it applies to physical documents, electronic titles, and electronic powers of attorney. As electronic reassignments are addressed in the definition of *Electronic Title* the final rule also removes the reference to an electronic reassignment document in § 580.4(b). In transactions where paper titles are used, separate reassignment documents become necessary when the title is reassigned multiple times and the existing title can no longer physically accommodate the required odometer disclosures. In the case of an electronic title, no such physical limitation exists, and, for all practical purposes, all the necessary reassignment disclosures will be incorporated into the electronic title. However, as there may be instances where a transferee is provided with a paper title by the transferor in a state with electronic titles, and the transferee may not wish to take title to the vehicle, an electronic reassignment option should be made available in those circumstances where a paper reassignment form would otherwise be used. Accordingly, § 580.5(g) of the final rule provides that an electronic reassignment shall be made before issuance of an electronic title where the

transferee receives a paper title and no room exists on that title for the desired reassignment. Other changes made in this section for the sake of clarity and consistency include deletion of the word "forms" when referring to electronic records, substitution of "jurisdiction" for "state," and expansion of the term "secure process" in § 580.4(a) to "secure printing process or other secure process."

G. Odometer Disclosures

NHTSA proposed changing § 580.5, Disclosure of odometer information, to accommodate electronic odometer disclosures by adding references to electronic systems, directing information required on a paper title be entered in an electronic form incorporated into the electronic title, requiring warnings be provided electronically for electronic transactions, and executed electronic disclosures be made available to the parties. Where paper transactions required participants to provide a printed name, the NPRM proposed the printed name was not needed in electronic transactions and sought to delete that requirement. NHTSA also proposed an existing requirement that transferees provide a copy of a completed paper disclosure form to transferors be expanded to electronic transactions by requiring that the completed electronic disclosure be made available to the parties. To address situations where a vehicle has not yet been titled, NHTSA proposed amendments for the use of disclosures separate from the title in both paper and electronic systems.

Commenters supported the proposed changes while offering modifications aimed at improving clarity and flexibility. The final rule addresses many of the concerns found in the comments. Because this final rule adopts a definition of an "electronic title" instead of the proposed "electronic document," changes consistent with that definition are now incorporated into § 580.5. Section 580.5(a) states the mileage and other information required for odometer disclosures must be incorporated into a physical title or an electronic title presented to a transferee. Because an electronic title has unlimited space available for disclosures, § 580.5(b) of the final rule provides physical titles must have space available for the required elements of the disclosure. Where NHTSA proposed in § 580.5(c) that an odometer disclosure be made an "electronic form incorporated into the electronic title," the final rule now provides disclosures be made on an

electronic title to clarify that electronic title systems are not, as many commenters noted, limited to systems where "forms" are scanned into an electronic format. The final rule also differs from our proposal by requiring that parties provide a printed name on both physical and electronic titles. As noted above, using "pen pads" or similar handwriting conversion technologies could result in an inability to identify individuals in "hybrid" electronic title and odometer disclosure systems. Section § 580.5(d) of this final rule specifies the warnings and notices present on paper odometer disclosures also be presented to parties executing an electronic disclosure. The NPRM proposed an additional requirement be added to this section in electronic transactions in the form of a check box or similar mechanism to ensure the notices were read and understood before the transaction can move forward. In response to comments that this requirement is superfluous, since the electronic or physical signature already constitutes acknowledgement of these warnings, the final rule does not require a separate acknowledgement or "check box" in electronic disclosures.

NHTSA is also adopting the language proposed in the NPRM for § 580.5(f), with some modifications. Because of comments that the proposal did not sufficiently specify the sequence in which odometer disclosure statements are signed, this final rule states a transferee must execute the disclosure statement "upon receipt" of the transferor's signed disclosure. While the concept of "receipt" is arguably more ephemeral in an electronic transaction when no physical document is present, the agency believes that "receipt" in that context occurs when a system provides a display confirming the transferor's signature and all the required elements of the disclosure itself. For electronic systems, this final rule also adapts the requirement in § 580.5(f) that a transferor provide a paper copy of the executed disclosure statement to the transferee by requiring that such systems must make the completed statement available to the parties. Although one commenter objected to states being required to provide this copy, the requirement is satisfied if the electronic system allows the parties to print or download a record of the odometer disclosure and the required elements of that disclosure.

The requirement that odometer disclosures be made on the title and not on a separate document is critical for preventing odometer fraud. Since the title is nearly indispensable when establishing ownership, making

disclosures on the title ensures that opportunities for counterfeiting odometer statements are kept to a minimum. Consistent with this theme, part 580 allows odometer disclosures to be made on a document other than the title only in very prescribed circumstances. One of these is when the title is lost or held by a lienholder and the power of attorney authorized by this part may be used. Another exists when a paper title, which is required to have space for an odometer disclosure and subsequent reassignments, no longer has space available for additional reassignments. A reassignment document may also be used when the vehicle at issue has never been titled. While preserving the foregoing provisions for physical documents in paper title states, our NPRM proposed amendments stating electronic title and odometer disclosure systems shall provide a means for making the disclosure electronically and incorporating it into the electronic title when the title is created. Commenters supported this proposal but requested states have the option of employing either a paper or an electronic system for these transactions, even where the jurisdiction provided an electronic title and odometer disclosure system. NHTSA agrees that states, whether they have an electronic or paper-based title and odometer disclosure system, must have the option of using either paper or electronic disclosure statements in instances when a vehicle has not yet been titled. The final rule now provides that option.

The final rule also allows the use of electronic or physical reassignments under specific conditions after a vehicle has been titled. These conditions stem from the nature of physical titles and the fact that transfers occurring in electronic title jurisdictions will inevitably involve transactions where a transferor has a paper title. Because physical titles can only accommodate a certain number of reassignments, separate secure reassignment documents can be employed to facilitate transfers between parties that do not take title to the vehicle. Where a transaction involves a vehicle with an electronic title, the electronic title system should accommodate any number of reassignments. Therefore, reassignment documents, either electronic or physical, would not be needed in electronic title jurisdictions. There will, however, be situations where an electronic title system must allow electronic reassignment before an electronic title has been created. The first will be instances where the vehicle

has never been titled and neither an electronic or a physical title is available for recording reassignments. Another circumstance requiring an electronic reassignment would arise when a transferor holding a paper title for a vehicle wishes to transfer that vehicle in a jurisdiction with an electronic title system. In that circumstance, a mechanism needs to exist to allow further reassignments prior to issuance of the electronic title. If the transferor holding the physical title makes the disclosure on that title, the final rule requires subsequent electronic reassignments in such an instance, even though the vehicle has a physical title.

Consistent with other provisions of this final rule, § 580.5(g) disposes of the use of separate physical odometer disclosure statements in states with electronic title and odometer disclosure systems. To make this limitation on the use of separate physical odometer disclosure statements after a title has been issued, the final rule now states a separate physical disclosure statement may only be used after the holder of a physical title has made a proper odometer disclosure, assigned the title to their transferee, the title no longer has space for a reassignment and the transaction's locale does not have an electronic title and odometer disclosure system. Finally, while states with electronic title and odometer disclosure systems may choose to employ separate physical disclosure statements in instances where a title has not been issued, the final rule establishes these states must provide a means for electronic odometer disclosures both before and after a title has been issued.

H. Requirements for Electronic Transactions

NHTSA proposed employing Section 580.6, previously reserved, to address issues specific to electronic transactions. These proposals included electronic storage in § 580.6(a)(1), electronic signatures in § 580.6(a)(2), availability of electronic records in § 580.6(a)(3), accounting for the potential for co-existing paper and electronic records in §§ 580.6(a)(4) and 580.6(a)(6), allowing a non-negotiable paper ownership record option in § 580.6(a)(5), NHTSA also proposed, requiring secure physical documents be used in electronic odometer disclosure systems in § 580.6(a)(7), and setting standards for converting secure paper documents to electronic formats in § 580.6(a)(8).

As set out in the NPRM, § 580.6(a)(1) stated electronic records shall be retained in a format which cannot be altered, and which indicates any

attempts to alter it. Commenters supported this proposal if the final rule allowed authorized alterations to the records to make corrections and other permissible changes. In response to these comments, the final rule makes several changes to this section. First, NHTSA has narrowed the applicability of this section from electronic "records" to electronic titles to remedy the overbreadth of our proposed language and for consistency with the remainder of the final rule. The final rule similarly changes the heading for § 580.6 to "Additional Requirements for Electronic Odometer Disclosures" to add clarity and precision. Proposed § 580.6(a)(1) is now redesignated as § 580.6(a) and, also for clarity, § 580.6(a)(2) through (8) are re-designated as § 580.6(b) through (h).

Section 580.6(a) of the final rule states electronic titles and power of attorney shall be retained in a format which cannot be altered unless such alterations are authorized and which indicates any unauthorized attempts to alter it (§ 580.6(a)(1)). This language allows authorized modifications in response to comments requesting this authority. To assist in detecting odometer fraud, these records must be stored in an order that permits systematic retrieval (§ 580.6(a)(2)) for a minimum of five years following conversion to a physical title, issuance of a subsequent title, or permanent destruction of the vehicle. Absent those events, the record shall be retained indefinitely. Final rule § 580.6(a)(2) and (3) mirror provisions for electronic record retrieval and storage that were found in § 580.6(a)(4) of the NPRM's regulatory text. These have been relocated as the focus of § 580.6, which has been narrowed to electronic odometer disclosures embedded in electronic titles and powers of attorney. The agency observes that two commenters, Texas and California, indicated the five-year retention period was unnecessarily burdensome and suggested three and four years respectively. Although NHTSA acknowledges that a shorter retention period would be less burdensome, the agency believes effective detection and prosecution of odometer fraud requires that states retain records, as dealers must, for not less than five years.

The agency also proposed requirements for signatures in electronic transactions. Section 580.6(a)(2), as set forth in the NPRM, stated any electronic signature identify an individual, and, further specified a business or entity be identified if the individual is acting on behalf of that business or entity. Comments submitted in response to this proposal were generally split—states,

AAMVA, and consumer or law enforcement-oriented groups supported it while dealers, auction firms, and their associations opposed it. Dealer groups believed the requirement to be unnecessary and inflexible as dealerships are entities regulated and licensed by their home states. Auction interests argued the requirement would impose a crippling burden on their ability to do business as they process hundreds or thousands of vehicles at a time. The final rule amends the language proposed in the NPRM to alleviate some of these concerns. Redesignated as § 580.6(b), this section is now restricted in application to electronic signatures made on odometer disclosures embedded in electronic titles or power of attorney. In contrast to our proposal, which was capable of being read as applying to all electronic transactions, the final rule requirement applies specifically to odometer disclosures.

In addition, the final rule also explains the requirement to identify both an individual and the entity that individual represents is, for auctions and dealers, limited to identifying the individual and the dealer or auction firm. NHTSA believes these modifications should relieve auctions from identifying multitudes of consignees that bring cars to them for sale, particularly since auctions typically do not take title or execute odometer disclosures. The agency does not, however, believe the requirement to identify both an individual and an entity when the individual represents an entity, should be eliminated. Identity verification schemes may rely heavily on personal information, not business information. Considering this, maintenance of what may be a rapidly changing list of “authorized” employees for a business would impose burdens on states and promote misidentification.

Executing odometer disclosures requires notices, warnings, and instructions to be read, information to be supplied by the transferor, acknowledgement and acceptance of the disclosure by the transferee, and, in paper transactions, a copy of the signed disclosure statement must be given to the transferor by the transferee. Transitioning from paper to electronic odometer disclosure requires parties have this information available. Then NPRM proposed any requirement in part 580 to disclose, issue, execute, return, notify, or otherwise provide information to another person is satisfied when the required information is electronically transmitted or otherwise electronically accessible to the party required to receive the

disclosure. One association and one state opposed this proposal as imposing a requirement on states that more properly lies with the parties. Objection was also made to this requirement as “process based” and not transaction based because of the proposed § 580.6 applying to electronic transactions.

The final rule adopts the language proposed in § 580.6(a)(3) in the redesignated § 580.6(c) with modifications responsive to commenter concerns. NHTSA observes first that § 580.6 has been recast to focus on electronic odometer disclosures instead of transactions to correct the impression it applies to processes. In addition, the final rule strikes the word “execute” from the proposed regulatory text and directs a requirement to disclose, issue, return, notify, or otherwise provide information to another person in the course of an electronic odometer disclosure is satisfied when the required information is electronically transmitted or otherwise electronically available to the party required to review or receive it. Therefore, the final rule clarifies the information at issue is that which is necessary for an odometer disclosure, and the duty to provide it is satisfied when it is made available to a party. As any electronic odometer disclosure must, at a minimum, provide an opportunity for parties to the transfer to view information, this requirement does not, for all practical purposes, impose an unnecessary burden.

Paper and electronic title and disclosure systems are likely to coexist for the foreseeable future. The NPRM proposed adding two sections to 580.6 to address the issues posed by the coexistence of paper and electronic systems. Section 580.6(a)(4) proposed requiring prior paper titles be copied electronically and then destroyed when a new electronic title is created. To preserve the paper title as a record, NHTSA also proposed the electronic copy of the paper title be retained for five years. Section 580.6(a)(6) proposed electronic title states must have an ability to issue secure paper titles and upon issuing such a title must invalidate any electronic title. Commenters supported these proposals but offered some concerns. One of these is that requiring destruction of physical titles by states is cumbersome, and the same purpose can be met by invalidating the paper title. Commenters also noted the requirement that only states can print paper titles might be too restrictive as technological advances might make it possible for secure paper titles to be produced by other entities. Indeed, one individual commenter

suggested individuals could print their own titles.

The agency is adopting the proposed sections with several modifications. Section 580.6(d), § 580.6(a)(4) in the NPRM, of the final rule requires states issuing electronic titles to obtain the prior physical title or proof that it was lost or invalidated before issuing a new title. These states must retain a physical or electronic copy of the physical title for five years, a period NHTSA believes is required for effective enforcement. As noted, the storage requirements for these records have been incorporated into the general requirements for storing electronic odometer disclosures in § 580.6(a) of this final rule. The final rule further adopts the language proposed in § 580.6(a)(6) of the NPRM without substantive change as § 580.6(f). NHTSA does not presently believe entities other than states should have the capability to issue titles.

NHTSA’s NPRM proposed, in § 580.6(a)(5), that states with electronic title systems have the option of providing vehicle owners with a paper record of ownership, including odometer disclosure information, if that document clearly indicates it is not an official title or odometer disclosure for that vehicle. The comments received in response to this proposal were very supportive, with some commenters expressing reservations such a document could be used fraudulently if not clearly marked. The final rule adopts the proposal in § 580.6(e), allowing issuance of such a document if it clearly indicates it is not an official title for the vehicle and may not be used to transfer ownership.

States may implement electronic title and odometer disclosure schemes by employing physical documents at some stage of the process. NHTSA’s approval of alternative odometer disclosure schemes presented by the Florida and New York petitions, was conditioned on the use of secure documents for portions of the odometer disclosure process. Section 580.6(a)(7) of the NPRM proposed any physical documents used make odometer disclosures for entry into an electronic title and odometer disclosure system to comply with the existing requirements of part 580. Comments directed toward this portion of the NPRM supported it, but two commenters, Arizona and Texas, respectively noted the proposed language conflicted or may conflict with other portions of the proposed rule.

The final rule adopts the regulatory text of § 580.6(a)(7) of the NPRM as § 580.6(g) and modifies the requirement that such a document meet the existing requirements of part 580. For clarity and

to eliminate conflicts with other provisions, the final rule paragraph states any document used to make odometer disclosures into an electronic system must be set forth by means of a secure printing process or other secure process. In addition, the final rule specifies the foregoing requirement does not apply to a lessee's odometer disclosure made in conformance with § 580.7.

The simultaneous existence of both paper and electronic title and odometer disclosure systems requires paper documents be converted into electronic records. As NHTSA remained concerned document conversion presented opportunities for fraud, § 580.6(a)(8) of the NPRM proposed processes for converting titles and other secure documents to electronic copies maintain security features and that scanning be made in color at a resolution of 600 dpi. Commenters reacted strongly to this proposal and argued strenuously that it was ill founded, costly, and impractical. After consideration of these comments, the agency agrees a 600-dpi requirement is impractical and that a 200-dpi standard should provide the required level of security. Accordingly, the final rule redesignates the proposal's paragraph § 580.6(a)(8) as § 580.6(h), eliminates the requirement that scanning or imaging be performed in color and reduces the required resolution to not less than 200 dpi.

Texas submitted comments suggesting an additional two subsections be added to § 580.6. The first of these would make an explicit provision for using a power of attorney in an electronic title jurisdiction where the transferor holds a lost physical title. Rather than have the transferor execute a power of attorney and then have the transferee obtain a physical title and then convert it to electronic form, the provision would allow use of a single power of attorney to complete the transaction and convert the title. NHTSA concurs with adding this provision, which is adopted by this final rule as § 580.6(i). Texas also offered an amendment providing that reassignment documents may not be used for making odometer disclosures with an electronic title because there is no physical limit on the number of reassignments that can be incorporated into such a title. The agency agrees this provision is desirable and has added § 580.6(j) to implement it in the final rule.

I. Leased Vehicles

Leased vehicles present challenges in making odometer disclosures because they are held by a lessee while the

lessor holds the title and, without the title accompanying the vehicle, frequently transferred by the lessee to a transferor. Section 580.7 establishes special procedures to ensure accurate mileage information is provided by the lessee to the lessor so the lessor can execute the odometer disclosure on the title. The NPRM proposed amendments to § 580.7 allowing the required documents be in the form of "electronic documents." Commenters generally supported the proposed amendments provided NHTSA did not extend the proposal to require states to play a role in facilitating lease vehicle disclosures. Many commenters noted the use of the terms "physical document" and "electronic document" as employed in the proposed regulatory text were incompatible with the definitions and security requirements of these documents proposed elsewhere in the NPRM. Consistent with the revisions this final rule makes to the definitions in § 580.3, this final rule revises § 580.7 by eliminating references to "physical document" and "electronic document" and stating required communications may be made electronically and in writing. Because the existing paper process does not contain such a requirement, the final rule also eliminates a proposal stating a lessee completing an electronic odometer statement must separately acknowledge understanding federal and applicable state law requirements prior to signing the disclosure.

J. Document Retention

Part 580's document retention requirements provide for the maintenance of records essential to establishing the paper trail used to detect and prove cases of odometer fraud. Section 580.8, applicable to dealers and distributors, and § 580.9, which applies to auction companies were both the subject of amendments proposed to include electronic copies or electronic documents as an acceptable form of record. The NPRM further proposed § 580.8 specify dealer electronic records be retained in a format which cannot be altered, and which indicates any attempts to alter it. Commenters questioned whether extending paper record requirements would be necessary in electronic title and odometer disclosure states given those states would store the same data. Comments also questioned the use of the term "electronic document" and "physical document" in the proposal given the definition proposed in § 580.3. Other comments questioned the proposal's amending the requirements for odometer disclosure statements for

dealers and distributors while not applying similar requirements to leased vehicle documents and powers of attorney. The final rule makes several changes to the amendments proposed in the NPRM in response to these comments

This final rule amends § 580.8(a) to provide dealers and distributors must retain paper or electronic copies of each odometer mileage statement they issue and receive for five years. The final rule further states electronic data shall be retained so it cannot be altered and which indicates any attempts to alter it. Similarly, the final rule amends § 580.8(c) to require dealers and distributors to retain paper or electronic copies of each power of attorney, executed pursuant to §§ 580.13 and 580.14, that they receive for five years and imposes the same storage requirements for electronic documents as found in § 580.8(a). Section 580.8(b) is also amended to require lessors to retain both written and electronic odometer disclosure statements they receive from lessees for five years and, if the disclosure is electronic, the data shall be retained so it cannot be altered and which indicates any attempt to alter it. The final rule also adds a new paragraph, § 580.8(d), specifying that in the case of odometer disclosure statements made on electronic titles or electronic powers of attorney, dealers and distributors need not retain the data if the jurisdiction retains this information for five years and makes it available to these dealers and distributors at their principal place of business. To ensure these records are available to enforcement officials, the paragraph further states such data must be available at the dealer or distributors place of business upon demand.

As proposed in the NPRM, § 580.9, establishing document retention requirements for auction companies, employed the terms "electronic document" and "physical document" to describe the materials they must retain. Consistent with other changes made in this final rule, this section dispenses with those terms as used in the NPRM and states that the information may be physical or electronic. Also, the final rule replaces the term buyer in § 580.9(b) with "transferee" as that term is employed throughout part 580.

K. Power of Attorney

As required by the Truth in Mileage Act of 1986 (TIMA), NHTSA issued a final rule in August 1988 (53 FR 29464), stating odometer disclosures may only be made on the vehicle title unless the vehicle has never been titled or the title did not contain sufficient space for the

disclosure. *Id.* at 29471. The command that odometer disclosures can only be made on the title could cause serious difficulties in instances where the title was held by a lienholder because the title, and the means for making an odometer disclosure, would not be available to the owner of the vehicle subject to the lien if that owner wished to sell the vehicle or trade it in when buying a new car. Congress responded to the foregoing final rule by inserting a provision in the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561) amending TIMA’s requirement that odometer disclosures be made only on the title. This amendment allowed use of a special power of attorney for executing odometer disclosures when a title is physically held by a lienholder. NHTSA implemented changes to part 580 authorizing use of this power of attorney by an interim final rule published in the **Federal Register** on March 8, 1989. (54 FR 9609). NHTSA later expanded the applicability of the power of attorney provisions to instances where the title was held by a lienholder or the title was lost. (54 FR 35879).

The advent of electronic title and odometer disclosure systems presents challenges stemming from the requirement that odometer disclosures must be made on the title, a reassignment document if no space for disclosure is available on the title, or through the special power of attorney when a title is physically held by a lienholder or has been lost. If an electronic title is subject to an electronic lien, it is not available to the vehicle owner to allow odometer disclosure until the lien is released. Further, as explained in the NPRM, a person holding an electronic title issued in one state may wish to sell their vehicle in a state that does not have an electronic title and odometer disclosure capability. Again, this vehicle owner would not have a title on which to make an odometer disclosure unless they obtained a printed title from their state beforehand.

NHTSA proposed amending § 580.13(a) and (b), to allow an individual with a vehicle titled in an electronic title state to use a power of attorney to sell a vehicle in a paper title state. Based on the belief that a power of attorney should not be needed when electronic titles and disclosures were available, the agency limited their use to the paper format. Commenters observed the NPRM’s view a power of attorney would be useful in interstate transactions from an electronic title state to a paper state was flawed as the transferor would still need a paper title

to register the vehicle. Most commenters advocated having both electronic and paper versions of the power of attorney in jurisdictions with electronic title and odometer systems. Three commenters noted language in § 580.13(f) stating “. . . if the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title” (emphasis added) is erroneous. These commenters noted the dealer does not complete the disclosure and should be changed to “transferee.” Another commenter encouraged amending § 580.13(f), which specifies that a power of attorney is void if the odometer reading on the power of attorney is lower than on the title, to accommodate instances where the disclosure properly reports the odometer reading is known to be in excess of mechanical limits or is “not actual.” This commenter further asked that this section allow for electronic submission of an original power of attorney by scanning or imaging and that § 580.16 be amended to specify that a copy of a power of attorney be made available upon request rather than returned. Other comments noted an electronic title could be unavailable when subject to an electronic lien or in the event technical issues in an electronic system made titles temporarily unavailable. Commenters aligned with lenders asked the power of attorney be expanded so lenders could perform disclosures for their clients.

The agency is adopting several changes to this portion of the final rule in response to the comments. For clarity, these amendments required bifurcating the former § 580.13(a) into two paragraphs, § 580.13(a) and (b), and redesignating the former § 580.13(b) through (f) as § 580.13(c) through (g). This final rule adds a new paragraph, § 580.13(h), as explained below.

Section 580.13(a) now specifies a power of attorney may be either a paper document, defined as an “Original power of attorney” in § 580.3, or may exist in electronic form consistent with the final rule’s definition of “Electronic power of attorney.” The restriction on the use of the power of attorney when the title is lost or is physically held by a lienholder remains in place for physical or paper titles. However, either an electronic power of attorney or an original power of attorney may be used when a paper title is lost or held by a lienholder. Given the likelihood that electronic title and odometer disclosure systems will not be implemented across the nation in the foreseeable future, the final rule provides a power of attorney

may be used if the title in question is electronic. For an electronic title, the final rule allows use of a power of attorney under two circumstances. The first is when the electronic title is held or controlled by a lienholder. In NHTSA’s view, this situation is analogous to that where a paper title is physically held by a lienholder as the title is not available to the transferor because the title will only be released when the lien is satisfied. The final rule also provides a power of attorney may be used when an electronic title cannot be accessed. The term “accessed” is employed here as defined in § 580.3 and therefore means the power of attorney may be used only in circumstances where either a transferee or a transferor does not have the ability to make authorized changes to the electronic title. In incorporating this provision into the final rule, NHTSA believes it offers the flexibility required to allow transferors with electronic titles to sell or trade in vehicles in states without electronic titles or odometer disclosure systems when the transferor did not obtain a paper title prior to the transfer.

NHTSA believes the foregoing changes to § 580.13(a) address the pre-eminent concerns expressed by most commenters. The final rule allows both physical and electronic powers of attorney to afford the flexibility required to facilitate vehicle transfers as states transition from paper to electronic titling and odometer disclosure. The agency acknowledges a power of attorney will not, in transactions where vehicle with an electronic title is transferred in a jurisdiction without electronic titles, allow the transferee to register and title the vehicle without obtaining a paper title from the transferor’s state. Nonetheless, that same obstacle exists today in interstate transactions involving a lost physical title or one that is physically held by a lienholder.

This final rule also amends former § 580.13(a) through (e), now redesignated as § 580.13(b) through (f) to make these sections consistent with changes implemented elsewhere. Where it appeared, the term “state” is now replaced with “jurisdiction” to conform to the definition added in § 580.3. References to the power of attorney are also modified by use of the terms “original” and “electronic,” and the term “title” is similarly modified by the terms “electronic” or “physical.” Because of concerns raised by the potential for illegible signatures or address information in instances where a “pen pad” or similar device for recording hand written information electronically may be used, these

sections have also been changed to require a printed name and a printed address.

NHTSA has also made amendments responding to comments addressing the former § 580.13(f), now redesignated at § 580.13(g), and added a new paragraph § 580.13(h). Along with adding the necessary terms to accommodate electronic and original powers of attorney and physical and electronic titles to the former § 508.13(f), the final rule now provides two exceptions to the requirement that mileage shown to be lower than that disclosed on the title voids the power of attorney. The two exceptions added reflect two instances where the mileage on the power of attorney may properly be lower than that shown on the prior title—when the transferor states that the mileage shown reflects mileage in excess of the designed mechanical odometer limit or that the mileage shown does not reflect the actual mileage. This final rule also removes the word “dealer” in this paragraph and replaces it with the word “transferee” for consistency. This final rule also adds § 508.13(h), allowing states to receive copies of an original power of attorney in an electronic format after scanning or imaging.

This final rule also amends §§ 580.14 through 580.16 to allow for the use of both electronic and original powers of attorney, electronic and physical titles and to replace “state” with “jurisdiction” consistent with the definitions in § 580.3. As § 580.14 sets out the requirements of Part B of the power of attorney and is a counterpart to Part A addressed by § 580.13, the final rule also adds the requirement transferees provide a printed name and a printed address in § 580.14(b)(3) and (4). Consistent with § 580.13(g) of this final rule, § 580.15—establishing the certification requirements for a person exercising the power of attorney—is modified to account for situations where a transferor has indicated mileage exceeds mechanical limits of the odometer or has stated the odometer does not reflect the actual mileage. Therefore, § 580.15(a) is revised to relieve the person making the certification from attesting that the mileage they disclosed (as authorized by the power of attorney) is greater than that previously shown in the title or a reassignment document if they disclosed that the mileage exceeds mechanical limits or the odometer reading does not reflect the actual mileage. The foregoing change to § 580.15(a) requires restructuring the remainder of this section for clarity. Accordingly, § 580.15(b) is redesignated in the final rule as § 580.15(c) and the

final sentence of the former § 580.15(a) is now § 580.15(b). In addition to the redesignation, § 580.15(c) is also modified to provide an exception to voiding the power of attorney for mileage inconsistency where the disclosure states the mileage is in excess of mechanical limits or does not reflect the actual mileage. The final rule makes another revision for consistency by replacing the term “purchaser” with “transferee” in § 580.16(b).

L. Exemptions

NHTSA’s NPRM proposed amending § 580.17(a)(3), exempting any vehicle more than 10 years old from the odometer disclosure requirements, to raise this exemption to 25 years. Comments submitted in response to the proposal were consistent in raising concerns about how such a change would be implemented because many vehicles exempt under the former rule would no longer qualify, but may have already been claimed as exempt. Far less consensus existed in consideration of the wisdom of changing the exemption. Some commenters strongly supported the proposal, citing the increased age of the vehicle fleet and providing anecdotal evidence of significant odometer fraud prosecutions involving older vehicles. One commenter noted some states do not issue titles for older vehicles, presenting the paradox of requiring disclosure on a title when no title exists. Out of states submitting comments, only one indicated any degree of opposition, citing possible increased data entry costs. Dealers, insurers, and auctioneers opposing the proposed change to the exemption argued it would increase disclosure and recordkeeping burdens for transferors, transferees, and states, without providing any known benefit. Others also decried the notion this change would provide any benefit, contending buyers of older cars do not consider mileage as an important indicator of value, while one commenter noted theft and cloning are largely restricted to newer and higher value cars.

After review of the comments and consideration of the available data, NHTSA is modifying the 25-year exemption proposed in the NPRM to a period of 20 years. NHTSA notes that it amended the previous 25-year exemption to a 10-year exemption rule in 1988. (53 FR 29464, August 5, 1988). In the preamble to the 1988 final rule, the agency observed it was abandoning the 25-year exemption because of evidence derived from studies conducted in Wisconsin and Iowa that odometer tampering was

disproportionately small as compared to the number of vehicles in that age group. The agency also observed at the time that many commenters indicated that the prices for vehicles over ten years old was not typically based on the odometer reading. Given the low incidence of odometer tampering and substantial evidence that buyers in 1988 were not relying on mileage as the primary indicator of condition in vehicles 10 year old and older than 10 years, NHTSA adopted an exemption that applied to vehicles 10 years old and older. *Id.* at 29472. When that final rule was issued in 1988, the average age of automobiles in use was 7.6 years.² In 2017, almost three decades later, the average age of light vehicles in use had risen to 11.7 years.³

The 2017 National Household Travel Survey also validate this trend of increased vehicles longevity. The survey shows that the average age of household vehicles increase to 10.1 years for cars and 10.4 for light trucks/vans (LTVS) from 7.6 and 8.0 years, respectively, in 1990. In other words, 10 years and older vehicles also have increasingly comprised a greater proportion of household vehicles. In 2017, about 47 percent of the household cars and 50 percent of the household LTVs were 10 years and older—a significant increase from the respective 30 percent and 32 percent in 1990.⁴ Furthermore, based on the NHTSA established scrapped rate schedule, the average age of vehicles when they are scrapped (*i.e.*, age at 50 percent scrappage rate) is about 16 years old for cars and 15 years old for LTVs.

In 2008, noting the increasing age of light vehicles in use, the U.S. Department of Justice (DOJ) requested NHTSA consider review of the 10-year exemption. Among other things, DOJ observed the increasing numbers of “exempt” titles increased opportunities for odometer fraud while the advent of mileage records in Carfax and similar venues made such titles more valuable for those engaging in odometer fraud. Consistent with increases in vehicle age since 1988, the age of vehicles that have their mileage altered has also increased. An April 2002 NHTSA study, which

² Average Age of Automobiles and Trucks, Fed. Highway Admin., available at <https://www.fhwa.dot.gov/ohim/onh00/line3.htm> (last visited Sept. 13, 2019).

³ America’s Cars and Trucks Are Getting Older, Business Insider (Aug. 22, 2018), available at <https://www.businessinsider.com/americas-cars-and-trucks-are-getting-older-2018-8> (last visited Sept. 13, 2019).

⁴ Table 21 of Summary of Travel Trends, 2017 National Household Travel Survey, Fed. Highway Admin., July 2018, available at https://nhts.ornl.gov/assets/2017_nhts_summary_travel_trends.pdf (last visited Sept. 13, 2019).

examined 11 model years of data, found the rate of odometer fraud began to rise in the fourth and fifth year of service and then remained consistently high through years 7 through 10. A 2013 study performed by a private company, CARFAX, found vehicles 14 to 15 years old were most susceptible to having had their odometers rolled back.⁵ The increased longevity of vehicles in years has been matched by change in the number of miles travelled before a vehicle has reached the end of its useful life. In the years before NHTSA's 1988 amendment decreasing the exemption from 25 to 10 years, vehicles that had travelled over 100,000 miles were generally considered to be at or near the end of their useful lives. Improvements in vehicle quality and advancements in technology have greatly extended this figure and worked corresponding changes in the used vehicle market. According to the data Edmunds provided to NHTSA, the 100,000 miles travelled approximated to that for an average 8/9 years old vehicles that were sold in 2017. These 8 to 9 years, on an average, would still maintain 87 to 89 percent of its useful life. Furthermore, not only have vehicles lasted longer, they also retain a greater proportion of their original manufacturer suggested retail price (MSRP). Edmunds data indicated that a 10-year-old vehicle retained 21 percent of its original MSRP in 2012. In 2017, the percentage increase to 26 percent.⁶

Additional considerations supporting changing the exemption include the relative ease with which modern odometers may be rolled back and the significant increases in market value that may be gained through such fraud. Mechanical odometers have vanished from the market and have been controlled by microprocessor driven digital displays. As the microprocessors controlling the odometer display are also employed in service of anti-theft devices and other functions, they may be accessed by specialized software through the vehicle's diagnostic port. This specialized software, which may be used to reset, repair or correct information in the module controlling the odometer and other systems in the instrument cluster can also be employed to remove mileage from the odometer display in minutes. Given the improved

corrosion resistance and improved quality of exterior finishes on contemporary vehicles, resetting an odometer display to remove 100,000 miles from the mileage shown can significantly alter the market value of a car, often by many thousands of dollars. For those inclined to commit odometer fraud, the profit that can be gained from a single transaction can far exceed the investment in software and time needed to change the odometer display. Therefore, NHTSA's view is that the increased age of vehicles, the changes in the used car market prompted by vehicle longevity, the relative ease with which modern odometers may be rolled back and the known trends in odometer fraud support extending the exemption to 20 years.

Implementation of any change in the exemption caused many commenters to voice concern as the NPRM proposal did not account for vehicles subject to the prior exemption in the regulatory text. The final rule addresses this issue by stating the 20-year exemption applies only to vehicles manufactured after the 2010 model year, ensuring previously exempt vehicles are not captured by the new rule.

The agency believes the costs associated with changing the exemption will be negligible and more than offset by the benefits gained from protecting consumers from odometer fraud. Although one state and several commenters associated with dealers and auctioneers cited additional data entry and recordkeeping costs associated with modifying the extension, the exact nature and source of these costs was not described in the comments.

Approximately 40 million used car sales occurred in the United States in 2018. Vehicles over 10 years old accounted for approximately 3 to 4 percent of retail sales by franchised new car dealers⁷ and 12 percent of sales by independent dealers.⁸ Many older vehicles are sold through private sales or at wholesale auctions.⁹ Private used car sales accounted for approximately 28 percent of 2017 used car sales or slightly less than 11 million sales.¹⁰

⁷ Used Vehicle Outlook 2019, Edmunds, available at <https://static.ed.edmunds-media.com/unversioned/img/industry-center/insights/2019-used-vehicle-outlook-report-final.pdf> (last visited Sept. 13, 2019).

⁸ NIADA 2018 Used Car Industry Report, National Independent Auto Dealers Association, available at https://www.niada.com/uploads/dynamic_areas/ei514ZznCKTc8GyrBKd6/34/UCIR_2018_Web.pdf? (last visited Sept. 13, 2019).

⁹ Used Vehicle Market Report, Edmunds, Feb. 2017, available at https://dealers.edmunds.com/static/assets/articles/2017_Feb_Used_Market_Report.pdf (last visited Sept. 13, 2019).

¹⁰ Charles Chesbrough, The Used Vehicle Market: Bumps On The Road Ahead, available at <https://>

Franchised dealers were responsible for approximately 37 percent of the used car sales while independent dealers accounted for approximately 34 percent of these sales.¹¹ Wholesale auctions, which are an important source of used cars inventory for dealers, sold approximately 10 million cars in 2018.¹² Given that approximately 4 and 12 percent of used car sales respectively involving franchised and independent dealers involve vehicles over 10 years old, the change in the exemption will impose some additional costs on these dealers which can be quantified with a degree of certainty. These additional costs will stem from having to complete odometer disclosure forms for vehicles which, because of their age, had the mileage blank on the title marked with the word "exempt" while leaving the remainder of the form blank. In instances where the vehicle's paper title is not available because it is lost or held by lienholders, a transferor will have to employ the power of attorney form dictated by part 580 and the transferee will have to either complete the odometer disclosure on the title when it is obtained or execute Part B of the power of attorney in a subsequent transaction. This is most likely to arise when a consumer transfers a vehicle to a dealer either as a trade-in or in an outright sale. NHTSA believes that it is unlikely that the change in the exemption will involve execution of a both a power of attorney and the odometer disclosure statement in transactions involving private sales and wholesale auctions. In both private sales and auction sales, odometer disclosures are almost always made on the vehicle's title and do not involve the use of a power of attorney. Private sales are more likely to involve vehicles that are not subject to a lien and where the seller has the title in their possession. Buyers in private sales are also more likely to insist on having the title itself available at the time the transfer is completed. Similarly, auction sales also rarely involve vehicles for which the title is not available. As these are wholesale transactions where the auctioneer is acting as the agent on behalf of a seller that is a business entity, the vehicle title is available at the time of sale.

The change in the exemption period made by this final rule will also impose some additional recordkeeping costs.

www.chicagofed.org/~media/others/events/2017/automotive-outlook-symposium/chesbrough-06022017-pdf.pdf (last visited Sept. 13, 2019).

¹¹ *Id.*

¹² Auction Industry Survey For the Year Ended Dec. 31, 2018, available at https://www.naa.com/pdfs/AuctionIndustrySurveySummary_2018.pdf (last visited Sept. 13, 2019).

⁵ Carfax: Odometer Fraud Hits Nearly 200,000 Cars Annually, available at <https://www.carfax.com/press/carfax-odometer-fraud-hits-nearly-200-000-cars-annually> (last visited Sept. 13, 2019).

⁶ Used Vehicle Market Report, Edmunds, Feb. 2017, available at https://dealers.edmunds.com/static/assets/articles/2017_Feb_Used_Market_Report.pdf (last visited Sept. 13, 2019).

Dealers are required to retain copies of executed odometer disclosure statements for a period of five years. As noted above, this may either involve retaining a copy of the executed odometer disclosure on the back of a title or a copy of both the power of attorney form and the odometer disclosure on the back of the title made under the authority given by the power of attorney.

M. Miscellaneous Amendments

The NPRM proposed various amendments updating the agency's address, removing obsolete text, and conforming the petition for alternative disclosure schemes requirements to the other proposed amendments. These included inserting a new address in §§ 580.10(b)(2) and 580.11(b)(2), deleting the text in § 580.12 and amending § 580.11(a). A single commenter supported these proposed amendments. This final rule adopts these amendments as proposed in the final rule.

N. Other Comments

Several commenters proposed amendments not offered in the NPRM. One commenter suggested the term "his" used in various sections of part 580 be changed to be gender neutral and that "purchasers" in § 580.2 be changed to "transferees" because not all transfers of ownership requiring an odometer disclosure are the result of a purchase and "purchaser" is not defined in part 580. This commenter also proposed changing "at the time the lessors transfer the vehicle" in § 580.2 to "at the time the lessees return possession of the vehicle to the lessors" to more accurately fix the time when a lessee must make disclosure. The final rule adopts these changes.

Commenters also asked for clarification on when a power of attorney may be used in conjunction with odometer disclosure by third parties such as lienholders, title services, and auctions. NHTSA observes the definition of both "transferor" and "transferee" in § 580.3 includes not just the owner and the buyer but also an agent acting on their behalf. Such an agent may include an individual or entity appointed by a general or limited power of attorney. If, however, that agent is representing an owner in a situation where the special power of attorney set forth in § 580.13 may be used, that agent must make the odometer disclosure on the secure special power of attorney specified in that section.

Several commenters requested NHTSA implement provisions

providing lenders with the ability to make odometer disclosures through the special power of attorney in § 580.13 as well as requiring the mileage on disclosures be transmitted electronically to lenders. NHTSA does not believe expanding the scope of permissible users of the special power of attorney to be desirable because limiting the use of these documents reduces the opportunity for fraud. The agency also declines to require mileage disclosures to be transmitted electronically to lenders as such a requirement is inconsistent with the purposes of part 580.

Comments were also submitted supporting provisions to address "end of life" of vehicle title processing. These commenters suggested special electronic processes be implemented to facilitate transfers of vehicles that are scrapped or have been declared to be a total loss. NHTSA acknowledges the desirability of streamlining the process of transferring vehicles to recyclers as well as transfers for vehicles that have been declared to be a total loss. The agency does not, however, believe it should take further action other than fostering the development of electronic title and odometer disclosures through issuing this final rule.

The NSVRP urged NHTSA to make whatever changes were needed to ensure odometer readings were reported to the correct jurisdiction at every transfer, including dealer-to-dealer transfers. NHTSA concurs in the goal of having odometer mileage accurately reported at every opportunity and believes the implementation of electronic title and odometer disclosure systems will do much to achieve that goal. As this final rule eliminates reassignment documents in states with electronic odometer disclosure systems, mileage will be reported more frequently when these systems are implemented. The agency is not requiring such reporting where paper documents are used absent further analysis of the burdens that would be imposed and the benefits what would accrue.

Auctioneer representative NAAA stated U.S. Customs and Border Protection (CBP) regulations require vehicles to be exported with the original or certified copy of the title. This commenter fears CBP may not be prepared to work with electronic titles, and delays in issuing paper titles may harm vehicle exporters. NHTSA believes this final rule will not result in titles becoming more difficult to obtain.

Two commenters addressed the petition process for approval of odometer disclosure schemes,

expressing concern about the effect the NPRM would have on the continued existence of the petition process. One commenter requested NHTSA establish rules for rescinding prior grants and that this final rule declare that it did not invalidate any previously granted petition. NHTSA did not propose eliminating the petition process in the NPRM, and this final rule does not make any changes to that process. The agency also does not agree there is a need to craft rules of general applicability for rescinding prior grants of any petitions for approval of alternative disclosure requirements. Historically, NHTSA has received few of these petitions and has, thus far, not encountered any situation calling for a rescinding a prior grant. To the extent any conflict exists between the requirements of this final rule and a previously granted petition, NHTSA expects the final rule to be controlling authority that must be followed. In making this statement, however, it is the agency's belief the provisions of this final rule are not inconsistent with any of its prior determinations approving alternative odometer disclosure schemes.

O. New Technologies

NHTSA intends for this final rule to accommodate emerging technologies such as blockchain that states may wish to use for recording electronic titles, making odometer disclosures, and authenticating electronic signatures. As was discussed previously, we cannot foresee all future security and authentication applications that states may wish to use to facilitate electronic odometer disclosures and title transactions. We intend for this final rule to be technology neutral. States can use any application for electronic odometer disclosure or title transactions so long as the application provides for NIST Level 2 assurance or equivalent and otherwise complies with the requirements of part 580.

IV. Effective Date

The NPRM did not propose a date on which the amendments offered by NHTSA would become effective. NHTSA has determined the amendments provided below shall become effective on December 31, 2019. The agency is issuing this final rule in response to a Congressional directive that NHTSA issue regulations allowing states to implement electronic odometer disclosure systems without having to petition NHTSA for approval. After thorough review of the comments and consideration of existing electronic odometer disclosure systems, the agency believes almost all of the states with

such systems currently will meet the new requirements. However, NHTSA notes that states whose systems may need to be modified to meet the new requirements will need to time to make any changes needed to comply with this rule. NHTSA has established an effective date that allows sufficient time to for states to ensure compliance.

V. Costs and Benefits

The estimated annual costs of the final rule considers the total labor cost for filling the mileage in odometer disclosures when ownership is transferred for 11 to 19 years old used vehicles, the cost for computer storage for these disclosure records, and the processing time for filing these records. The estimated benefits of the final rule primarily are measured by the annual consumer loss from the odometer fraud that can be eliminated by the exemption requirement of the final rule. Allowing e-odometer filing is expected to be more efficient for a paper form of odometer system and thus has the benefits of paper reduction and the decrease of record processing and management time. The agency presently is unable to quantify the efficacy impact of E-odometer, therefore, its benefit is not included. The estimated costs and benefits are expressed in 2018 dollars. Please see the accompanying cost and benefit analysis for a detailed discussion.

This final rule, except for the amendment modifying the exemption for vehicles of a certain age from the odometer disclosure requirements, establishes rules intended to accommodate electronic odometer disclosures in the event states or other jurisdictions seek to adopt such systems. The agency has carefully reviewed previous petitions for approval of such systems, the requirements of federal odometer disclosure law, past rulemaking actions, and the comments provided in response to the NPRM with a goal toward crafting regulations that will continue to protect against odometer fraud while providing sufficient latitude for jurisdictions to either retain or develop electronic title and odometer disclosure schemes. The agency believes the final rule will not require the small number of jurisdictions with electronic odometer systems to make significant changes to comply with the new rules, and NHTSA will work with those jurisdictions to facilitate compliance. Specifically, the final rule requires the security of the electronic systems that are comparable to the practice of the current state security requirements and to that recommended by the task force

sponsored by the American Association of Motor Vehicle Administrators.¹³ Therefore, the agency believes the final rule would not impose costs to states for the implementation of security requirement of the e-odometer systems.

This final rule also alters the previous exemption from odometer disclosure for vehicles that are 10 years old to make it applicable to vehicles 20 years old. This new exemption will apply to vehicles manufactured in the 2010 model year and later and, unlike the remainder of the provisions of this final rule, will be applicable to all vehicle transfers and odometer disclosures regardless of whether the disclosures are made on paper or electronically.

The increased quality and longevity of vehicles dictates half of vehicles now in use are more than 11 years old, and, with the average age at scrapping of 15 years, these vehicles are prime targets for odometer fraud. It is the agency's belief the aggregate cost of odometer fraud to purchasers of vehicles in the 10 to 20-year age range is substantial. Balanced against that cost, the burdens imposed by raising the exemption age are minimal. An odometer disclosure is one of many steps involved in transferring ownership of a vehicle. When a vehicle is old enough to be exempt from the disclosure requirements, the seller may choose to simply place the word "exempt" in the space where the odometer mileage would be entered. In such a case, the buyer and seller do not need to fill in the remainder of the disclosure form or sign it. However, whether made on the title or on a separate document when it is permissible to do so, the claim that the vehicle is exempt or the odometer mileage is recorded and processed by a state when the vehicle is registered. The odometer disclosure is also just one part of the larger process of transferring ownership in which the various participants are executing or processing documents and retaining copies as records. States will be maintaining these records regardless of whether the vehicle is exempt from odometer disclosure. Car dealerships also generally preserve all transaction records for at least five years, for tax and audit purposes. As such, the agency believes that the final rule would not have additional costs on computer and physical storage for states and car dealerships. The final rule also is not expected to increase the record processing burden to states and car

dealerships. Therefore, the only cost from the final rule would be the labor cost for the time that is needed for recording the mileage from "exempt" to the actual mileage, for inspection to ensure accuracy, time to sign the statement and to provide the name and address information.

Based on the NIADA Used Car Industry Report (NIADA report),¹⁴ there were 41.4 million used cars sold in 2017. Examining the data in the NIADA report, the data provided by Edmonds, and Polk vehicle registrations, the agency estimated that 10.4 million vehicles sold annually were between 10 and 19 years old. This represents the whole 10 model years (MY) of vehicles that would be affected by the extended exemption requirement of this final rule in the 10th (2019) and later years. During the first effective year of the final rule, *i.e.*, 2020, only one MY of vehicles, 2010 MY (*i.e.*, age 10) will be affected. One more additional MY vehicles will be added each year between the 2nd to the 9th effective years of the final rule. Afterwards, *i.e.*, the 10th effective year and later, a whole 10 MYs of vehicles will be affected each year.

The number of odometer disclosures for the affected vehicles would depend on the retained sources. Private party transactions (*i.e.*, individual to individual) will require one odometer disclosure assuming that the disclosure conforms to the current individual state regulations for vehicles 0 to 9 years old. By contrast, vehicles sold through dealers will involve at least two disclosures due to the wholesale level when vehicles are passed among dealers. With the lack of the statistics on how many times a used vehicle would be wholesaled before its retail purchase, the agency assumes a total of 5 disclosure transactions per retailed vehicle.

Using several data sources (Polk registration data, NIADA report, and Edmonds), the agency estimated that the total number of affected vehicles is about 1.4 million in 2020 when only one MY of vehicles would be affected. With one additional MY of vehicles affected each progressing year, the volume as expected will be gradually increased until reaching the maximum of 10.5 million units in 2029 and later years (2028+) when 10 MYs of vehicles (*i.e.*, 10 to 19 years old) were included. Derived from the same data source, the agency estimated that 40.3 percent were from private party sales and 59.7

¹³ Roadmap to Electronic Odometer Disclosure Guidance Document from the E-Odometer Task Force, March 2018, American Association of Motor Vehicle Administrators.

¹⁴ NIADA 2018 Used Car Industry Report, National Independent Auto Dealers Association, available at https://www.niada.com/uploads/dynamic_areas/ei514ZznCKTc8GyrBKd6/34/UCIR_2018_Web.pdf (last visited Sept. 13, 2019).

percent from car dealerships (franchised and independent). Therefore, there will be 4.9 million disclosures (=1.4 million * 0.403 * 1 + 1.4 million * 0.597 * 5) for 2020 and 35.4 million annual disclosures (= 10.5 million * 0.403 * 1 + 1.4 million * 0.597 * 5) for 2029+ years. The agency estimated that it will take 15 seconds to fill the actual mileage per disclosure and the average hourly labor cost in 2018 is \$36.39.¹⁵

Multiplying time in hours by the total disclosures and hourly labor cost derived the total cost of the final rule. The total cost of the change to the age-based exemption in the final rule is estimated to be from the minimum of \$0.7 million in 2020 to the maximum of \$5.4 million for 2029+ years.

Table 1 summarizes the affected MYs, the number of affected vehicles, the total number of mileage disclosures, and

the total costs from 2020. Note that the first part of the table shows the affected MYs and their corresponding age for each effective calendar year. The last column “2029+” indicates that 2029 and later, 10 MYs of vehicles will be affected by this final rule but with rolling one MY forwards each year. In other words, affected vehicles are MYs 2010–2019 for 2029, MYs 2011–2020 for 2030, and so on so forth.

TABLE 1—ESTIMATED COST OF THE FINAL RULE
[Affected vehicles]

Model year	Calendar year									
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029+
2010	10	11	12	13	14	15	16	17	18	19
2011		10	11	12	13	14	15	16	17	18
2012			10	11	12	13	14	15	16	17
2013				10	11	12	13	14	15	16
2014					10	11	12	13	14	15
2015						10	11	12	13	14
2016							10	11	12	13
2017								10	11	12
2018									10	11
2019										10

COST ESTIMATES
[In 2018 dollars]

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029 –
Units Sold (in Million)	1.4	2.8	4.2	5.5	6.6	7.7	8.6	9.3	9.9	10.5
Number of Transactions (in Million)	4.9	9.6	14.2	18.5	22.	26.0	29.0	31.5	33.7	35.4
Labor Hours (in 1000)	20.2	40.1	59.1	77.1	93.6	108.1	120.8	131.3	140.3	147.5
Labor Costs (in Million)	\$0.7	\$1.5	\$2.2	\$2.7	\$3.4	\$3.9	\$4.4	\$4.8	\$5.1	\$5.4

The benefit of the final rule as stated earlier is measured by the consumer cost from odometer fraud that can be eliminated due to the final rule. Based on the 2013 Carfax study,¹⁶ there are about 190,000 cases of odometer fraud (or rollbacks) with an annual loss of \$761 million indicating an average of \$4,000 loss per case. The study also stated that 60 percent of rollbacks occurred in vehicles 11 to 19 years old and the average rollback is about 50,000 miles.

These are the available rollback statistics and fraud monetary loss that the agency used as starting points for benefit estimates. Specifically, the fraud loss was adjusted from 2013 economics to 2018 economics. Therefore, the fraud loss is estimated to be \$820 million in 2018 dollars. The 60 percent rollback rate is used as the rate for all affected vehicles (*i.e.*, 10–19 years old) because of the lack of annual rollback

information by individual age. This implies that during the full effective calendar year where 10 MYs of vehicles will be affected, rollbacks for these 10 MYs of vehicles account for 60 percent of all rollbacks of that calendar year. The agency believes that the impact on fraud loss will be reduced disproportionately with increased age given the same rollback miles. To reflect this, the agency used the overall annual fraud loss of \$820 million as the base and estimated the proportion each age of vehicles’ contributing to this loss. To achieve this, the agency first developed a regression model describing the relationship between retail price and vehicle mileage using data provided by Edmonds. The 50,000 miles was treated as the average rollback miles and was used in the regression model to project the retail price when mileage is increased by 50,000 miles for all age of vehicles. The average price difference is

the retail price difference between a vehicle with a specific mileage level and with that mileage increased by 50,000 miles. The Edmonds data used in the regression model only reflects dealership transactions which tend to involve younger used vehicles. The model projected price difference thus might not account for the relative occurrence of each age of vehicles in the annual used car market. To address these issues, the projected price difference for individual vehicle age was indexed relative to that of age 0 (*i.e.*, ratio of price difference of individual age to that of Year 0). The relative indexes were then weighted by the vehicle age factors to account for the occurrence of each vehicle age. The age factors were developed using 2013 to 2018 Polk vehicle registration data. Thus, in 2020, there are about 15,700 rollbacks in vehicles 10–19 years old, representing a minimum annual impact.

¹⁵ Average of first three Quarters of 2018. Series Id: CMU101000000000D (C); Series Title: All Civilian Total compensation for All occupations;

Cost per hour worked as of March 18, 2019. Bureau of Labor Statistics, <https://data.bls.gov/cgi-bin/dsrv>.

¹⁶ Odometer Fraud 2013, Carfax, available at <https://cfx-wp-images.s3.amazonaws.com/2017/11/>

[odometer_fraud_infographic.jpg](#) (last visited Sept. 13, 2019).

These rollbacks would account for 3.6 percent of the overall annual fraud loss which equates to \$29.4 million (= \$820 million * 0.036). Representing a maximum annual impact, from 2028 onwards when a whole of 10 MYs would be affected each year, there would be 114,300 annual rollbacks. These rollback account for 18.3 percent of the overall annual fraud loss resulting in a \$150.1 million (= \$820 million *

0.183) loss to consumers. Table 2 summarizes the estimated annual rollbacks for affected vehicles, its share in overall annual fraud loss, annual consumer economic loss, and a 5-percent rollback scenario. As shown, if the rule can deter 5 percent of rollbacks from affected vehicles, *i.e.*, the 5% of loss, the rule would reduce \$1.5 million annual consumer loss in 2020 and \$7.5 million from 2029 forwards. In addition,

Table 2 also presents the breakeven point of the rule. The breakeven point is defined as the projected effectiveness of the final rule where the benefit is equal to the cost. The rule is expected to break even if the rule can eliminate 3.6 percent of the annual fraud loss (or rollbacks). If the rule can deter more than 3.6 percent of rollbacks in affected vehicles, the rule would accrue monetary benefits.

TABLE 2—BENEFITS ESTIMATES
[In 2018 dollar]

	Calendar year									
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029+
Units w/Rollback (in 1000)	15.7	31.1	45.8	59.8	72.5	83.8	93.6	101.8	108.7	114.3
Percent of Overall Annual Loss *	3.6%	6.8%	9.7%	12.3%	14.5%	16.4%	17.4%	18.0%	18.3%	18.4%
Annual Loss (in Million)	\$29.5	\$55.8	\$79.6	\$100.9	\$110.0	\$134.5	\$142.7	\$147.7	\$150.1	\$150.9
5% of Loss (in Million)	\$1.5	\$2.8	\$4.0	\$5.0	\$5.9	\$6.7	\$7.1	\$7.4	\$7.5	\$7.5
Breakeven Point **	2.5%	2.6%	2.7%	2.8%	2.9%	2.9%	3.1%	3.2%	3.4%	3.6%

* Overall annual loss from all vehicle ages is estimated to be \$820 million.

** The projected effectiveness where the benefit is equal to the cost.

Note: rounding might affect the final outcomes.

VI. Regulatory Notices and Analyses

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation’s regulatory policies require this agency to make determinations as to whether a regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Orders. Executive Order 12866 defines a “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

NHTSA has considered the potential impact of this final rule under Executive Order 12866, Executive Order 13563, and the Department of Transportation’s regulatory policies and procedures, and have determined that it is not significant. This proposal amends existing requirements to allow States a

new alternative means of complying with those requirements and changes the terms of an existing exemption from mileage disclosure. This change in the exemption will require slight additional data entry and otherwise does not impose any new regulatory burdens. For those States with existing electronic title and odometer disclosure systems, the agency believes that changes required to meet the new rule will not be burdensome. Therefore, this document was not reviewed by the Office of Management and Budget under E.O. 12866 and E.O. 13563.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

E.O. 13771 (82 FR 9339, February 3, 2017), Reducing Regulation and Controlling Regulatory Costs, requires that for “every one new [E.O. 13771 regulatory action] 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.”

An E.O. 13771 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” As discussed earlier, this final rule does not impose new requirements but rather creates opportunities for states to implement an electronic odometer disclosure system without petitioning NHTSA for approval. As such, it is considered a deregulatory action.

C. National Environmental Policy Act

NHTSA has reviewed this rule for the purposes of the National Environmental Policy Act and determined it would not have a significant effect on the quality of the human environment.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking 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 governmental jurisdictions). The Small Business Administration’s regulations at 13 CFR part 121 define a small business, in part, as a business entity “which operates primarily within the United States.” 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the proposal would 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 proposal would not have a significant economic impact on a substantial number of small entities.

In compliance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this final rule on small

entities. The head of the agency has certified that this final rule would not have a significant economic impact on a substantial number of small entities. The changes promulgated by this final rule, except for modification of the ten-year old vehicle exemption to 20 years, allow states the option of an alternative means of complying with previously existing requirements. Adoption of electronic title and odometer schemes by states choosing to do so, will likely confer benefits on small businesses. This final rule's modification of the previous 10-year exemption from mileage disclosure to 20-year old vehicles will require minimal changes in data entry for small businesses and not result in any significant effect.

E. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). Executive Order 13132 requires agencies to determine the federalism implications of a final rule. The agency has determined this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The final rule adds another option to the way states may process existing odometer disclosure requirements and alters existing statutory or regulatory requirements only by changing the terms of an exemption for owners from disclosing vehicle mileage when transferring the vehicle.

F. Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposal is discussed above in connection with Executive Order 13132.

NHTSA has also considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect. NHTSA notes further there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

G. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA finds this final rule, which establishes requirements for electronic odometer disclosure systems, does not implicate or encompass the issues outlined in the foregoing policy statement.

H. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), all federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. NHTSA is referencing the standards provided in NIST Special Publication 800-63-3, *Digital Identity Guidelines* (including sub-parts 800-63-

3A, 800-63-3B and 800-63-3C), to determine the appropriate level of security to authenticate electronic signatures.

I. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). In 2011 dollars, this threshold is \$139 million.

This final rule would not result in the expenditure by state, local, or tribal governments, in the aggregate, or more than \$139 million annually, and would not result in the expenditure of that magnitude by the private sector.

J. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. Today's final rule does not propose any new federal agency information collection requirements; it merely allows states to provide an alternative means of collecting information they already collect.

K. Incorporation by Reference

As discussed earlier in the relevant portions of this document, NHTSA is incorporating a single standard issued by the NIST into the Code of Federal Regulations in this rulemaking. The standard NHTSA is incorporating is NIST Special Publication 800-63-3 *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C).

Under 5 U.S.C. 552(a)(1)(E), Congress allows agencies to incorporate by reference materials that are reasonably available to the class of persons affected if the agency has approval from the Director of the Federal Register. As a part of that approval process, the Director of the Federal Register (in 1 CFR 51.5) directs agencies to discuss (in the preamble) the ways that the materials NHTSA is incorporating by reference are reasonably available to interested parties.

NHTSA has worked to ensure that standards being considered for incorporation by reference are reasonably available to the class of persons affected. In this case, those directly affected by incorporated

provisions are states and vehicle lessors choosing to adopt electronic systems for odometer disclosures. These entities have access to copies of the aforementioned standard through NIST at no charge. Other interested parties in the rulemaking process beyond the class affected by the regulation include members of the public, vehicle dealers, law enforcement agencies, consumer protection groups, etc. Such interested parties can access the standard by obtaining a copy from NIST.

Interested parties may also access the standards through NHTSA. All approved material is available for inspection at NHTSA's Office of Technical Information Services, 1200 New Jersey Avenue SE, Washington, DC 20590, phone number (202) 366-2588.

M. Executive Order 13211

Executive Order 13211 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, the agency must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

This rule is not economically significant and is not likely to have a detectable effect on the supply, distribution, or use of energy.

N. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, NHTSA must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not economically significant will not pose such a risk for children.

O. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or

signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://www.dot.gov/privacy.html>.

P. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 580

Consumer protection, Incorporation by reference, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, NHTSA amends 49 CFR part 580 as follows:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

- 1. Revise the authority citation for part 580 to read as follows:

Authority: 49 U.S.C. 32705; Pub. L. 112-141; delegation of authority at 49 CFR 1.95.

- 2. Revise § 580.1 to read as follows:

§ 580.1 Scope.

This part prescribes rules requiring transferors and lessees of motor vehicles to make electronic or written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408(a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 49 U.S.C. 32705(a) and (c). In addition, this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 49 U.S.C. 32706(d) and 32705(e).

- 3. Revise § 580.2 to read as follows:

§ 580.2 Purpose.

The purpose of this part is to provide transferees of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their

lessors the vehicle's mileage at the time the lessee returns the vehicle to the lessor. In addition, the purpose of this part is to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.

- 4. Amend § 580.3 by:
 - a. Revising the introductory text;
 - b. Adding in alphabetical order definitions for "Access", Electronic power of attorney", "Electronic title", and "Jurisdiction";
 - c. Revising the definition of "Physical power of attorney";
 - d. Adding in alphabetical order definitions for "Printed name" and "Sign or signature"; and
 - e. Revising the definition of "Transferor".

The revisions and additions read as follows:

§ 580.3 Definitions.

All terms defined in 49 U.S.C. 32702 are used in their statutory meaning. Other terms used in this part are defined as follows:

Access means the authorized entry to, and display of, an electronic title in a manner allowing modification of previously stored data, even if the stored data is not modified at the time it is accessed. The term does not include display of an electronic record for viewing purposes where modification of stored data is not possible, or where modification to the record is possible but results in a new, unique electronic title.

Electronic power of attorney means a power of attorney maintained in electronic form by a jurisdiction that meets all the requirements of this part. For the purposes of this part, this term is limited to a record that was created electronically and does not include a physical power of attorney that was executed on paper and converted by scanning or imaging for storage in an electronic medium.

Electronic title means a title created and maintained in an electronic format by a jurisdiction that meets all the requirements of this part. An electronic title incorporates an electronic reassignment form or process containing the disclosures required by this part facilitating transfers between transferors and transferees who do not take title to the vehicle. As set forth in § 580.5(g), an electronic reassignment may precede issuance of an electronic title when no electronic title exists. For the purposes of this part, this term is limited to a record created electronically and does not include a physical title

incorporating an odometer disclosure executed on that title and converted by scanning and imaging for storage in an electronic medium.

Jurisdiction means a state, territory, or possession of the United States of America.

* * * * *

Physical power of attorney means, for single copy forms, the paper document set forth by secure process which is issued by the jurisdiction, and, for multicopy forms, any and all copies set forth by a secure printing process or other secure process which are issued by the jurisdiction pursuant to § 580.13 or § 580.14.

Printed name means either:

(1) For a physical title or physical power of attorney, the clear and legible name applied to the physical document of the signatory; or

(2) For an electronic title or electronic power of attorney, the clear, legible, visible, audible, recognizable, or otherwise understandable name of the electronic signatory recorded and stored electronically.

Physical when referring to a document means a manufacturer's certificate of origin, title, reassignment document, or power of attorney printed on paper by a secure printing process or other secure process that meets all the requirements of this part.

* * * * *

Sign or signature means either:

(1) For a physical document, a person's name, or a mark representing it, as hand written personally.

(2) For an electronic odometer disclosure incorporated in an electronic title or power of attorney, an electronic sound, symbol, or process:

(i) Using a secure authentication system identifying a specific individual with a degree of certainty equivalent to or greater than Level 2 as described in NIST Special Publication 800-63-3, Revision 3, *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C), June 2017. NIST Special Publication 800-63-3, Revision 3, *Digital Identity Guidelines* (including sub-parts 800-63-3A, 800-63-3B and 800-63-3C), June 2017 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NHTSA must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NHTSA Office of Technical Information Services, 1200 New Jersey Avenue SE, phone number (202) 366-2588, and is

available from the National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, Maryland 20899, <https://pages.nist.gov/800-63-3/sp800-63-3.html>. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html; or

(ii) Completed in person before a bona fide employee of the jurisdiction or statutory agent under a surety bond with the jurisdiction.

* * * * *

Transferor means any person who transfers their ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

■ 5. Revise § 580.4 to read as follows:

§ 580.4 Security of physical documents, electronic titles and electronic powers of attorney.

(a) Each physical title shall be set forth by means of a secure printing process or other secure process. Additionally, a physical power of attorney issued pursuant to §§ 580.13 and 580.14 and physical documents, which are used to reassign the title, shall be issued by the jurisdiction and shall be set forth by a secure printing process or other secure process.

(b) Each electronic title shall be maintained in a secure environment so it is protected from unauthorized modification, alteration or disclosure. In addition, an electronic power of attorney maintained and made available pursuant to §§ 580.13 and 580.14 and shall be maintained by the jurisdiction in a secure environment so that it is protected from unauthorized modification, alteration and disclosure. Any system employed to create, store or maintain the foregoing electronic records shall record the dates and times when the electronic document is created, the odometer disclosures contained within are signed and when the documents are accessed, including the date and time any unauthorized attempt is made to alter or modify the electronic document and any unauthorized alterations or modifications made.

■ 6. Amend § 580.5 by revising paragraphs (a) through (g) to read as follows:

§ 580.5 Disclosure of odometer information.

(a) At the time a physical or electronic title is issued or made available to the transferee, it must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c) through (f) of this section at the time of future transfer.

(b) Any physical documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c) through (f) of this section at the time of transfer of ownership.

(c) In connection with the transfer of ownership of a motor vehicle, the transferor shall disclose the mileage to the transferee on the physical or electronic title or, except as noted below, on the physical document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the electronic title or the physical title, and not on a reassignment document. This disclosure must be signed by the transferor and must contain the transferor's printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the disclosure. In addition to the signature of the transferor, the disclosure must contain the following information:

- (1) The odometer reading at the time of transfer (not to include tenths of miles);
- (2) The date of transfer;
- (3) The transferor's printed name and current address;
- (4) The transferee's printed name and current address; and
- (5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the physical document shall provide a statement referencing federal law and stating failure to complete the disclosure or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction. If the transaction at issue is electronic, the information specified in this paragraph shall be displayed, prior to the execution of any electronic signatures.

(e) In addition to the information provided under paragraphs (c) and (d) of this section:

- (1) The transferor shall certify that to the best of their knowledge the

odometer reading reflects the actual mileage, or;

(2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, they shall include a statement that the mileage exceeds mechanical limits; or

(3) If the transferor knows that the odometer reading does not reflect a valid mileage display or differs from the mileage and that the difference is greater than that caused by odometer calibration error, they shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) Upon receipt of the transferor's signed disclosure statement, the transferee shall sign the disclosure statement, which shall include their printed name, and make copy available to their transferor. If the disclosure is on an electronic title, the jurisdiction shall provide a means for making copies of the completed disclosure statement available to the transferee and transferor.

(g) If the vehicle has not been titled the written disclosure shall be executed on a separate physical document or by electronic means and incorporated into the electronic title record. A separate physical reassignment document may be used for a subsequent reassignment only after a transferor holding title has made the mileage disclosure in conformance with paragraphs (c), (e), and (f) of this section on the title and assigned the physical title to their transferee. An electronic title system shall provide a means for making mileage disclosures upon assignment and reassignment electronically and incorporating these disclosures into the electronic title. A physical reassignment document shall not be used with an electronic title or when an electronic reassignment has been made. In instances where a paper title is held by the initial transferor, an available electronic reassignment may be used for a subsequent reassignment after a transferor holding title has made the mileage disclosure in conformance with paragraphs (c), (e), and (f) of this section on the title and assigned the physical title to their transferee

* * * * *

■ 7. Add § 580.6 to read as follows:

§ 580.6 Additional requirements for electronic odometer disclosure.

(a) Any electronic title or power of attorney as defined in this part shall be retained:

(1) In a format which cannot be altered unless such alterations are made as authorized by the jurisdiction, and which indicates any unauthorized attempts to alter it;

(2) In an order that permits systematic retrieval; and

(3) For a minimum of five years following conversion to a physical title, issuance of a subsequent physical or electronic title by any jurisdiction, or permanent destruction of the vehicle; otherwise, the record shall be retained indefinitely.

(b) Any electronic signature made on an odometer disclosure shall identify an individual, and not solely the organization the person represents or employs them. If the individual executing the electronic signature is acting in a business capacity or otherwise on behalf of another individual or entity, the business or other individual or entity shall also be identified when the signature is made. Electronic signatures on odometer disclosures made in connection with transfers by a licensed dealer or at an auction sale need only identify the individual executing the signature and the dealer transferring the vehicle or auction entity conducting the sale.

(c) Any requirement in these regulations to disclose, issue, return, notify or otherwise provide information to another person in the course of an electronic odometer disclosure is satisfied when the required information is electronically transmitted or otherwise electronically available to the party required to review or receive it.

(d) When an electronic title is created following transfer of ownership a vehicle with a physical title or an existing physical title is converted to an electronic title, the jurisdiction issuing the electronic title shall obtain the physical title or proof that the physical title has been invalidated or lost, and retain a physical or electronic copy of the physical title or proof for a minimum of five years.

(e) A jurisdiction issuing an electronic title may provide a paper record of ownership, which includes the odometer disclosure information, provided the paper record clearly indicates it is not an official title for the vehicle and may not be used to transfer ownership for the vehicle.

(f) A jurisdiction issuing an electronic title shall retain the capacity to issue physical titles meeting all the requirements of this part. If a physical

title is created by a jurisdiction with an electronic title and odometer disclosure statement system, any electronic record of the title must indicate that a physical title has been issued and the date on which the physical title was issued. The jurisdiction shall retain a record of the identity of the recipient of the physical title if the recipient is not an owner or a lienholder.

(g) Any physical documents employed by transferors and transferees to make electronic odometer disclosures shall be set forth by means of a secure printing process or other secure process. This requirement does not apply to mileage disclosures made by lessees as required by § 580.7

(h) Physical documents employed to comply with any of the requirements of this part that are converted to an electronic format by scanning or imaging must maintain and preserve the security features incorporated in the physical document so that any alterations or modifications to the physical document can be detected in the physical document's electronic format. Scanning of physical documents must be made at a resolution of not less than 200 dpi.

(i) When a transferor's physical title is lost, a jurisdiction may facilitate the transfer of a physical title through an electronic process without issuing another physical title provided a physical or electronic power of attorney pursuant to § 580.13 is properly executed by the transferor.

(j) Electronic reassignments shall be made on or in the electronic title or, as set forth in § 580.5(g), may be entered in the electronic title system prior to the first issuance of an electronic title. A physical reassignment document shall not be used with an electronic title.

■ 8. Amend § 580.7 by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 580.7 Disclosure of odometer information for leased motor vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee electronically or in writing stating that the lessee is required to provide a written or electronic disclosure to the lessor regarding the mileage. This written or electronic notice shall contain a reference to the federal law and shall state failure to complete the disclosure or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction. If the notice is electronic, the information specified in this paragraph shall be displayed prior to, or

at the time of, the execution of any electronic signatures.

(b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written or electronic statement regarding the mileage of the vehicle. This statement must be signed by the lessee. This statement, in addition to the lessee acknowledging receiving notification of federal law and any applicable law of the jurisdiction as required by paragraph (a) of this section, shall also contain the following information:

- (1) The printed name of the person making the disclosure;
- (2) The current odometer reading (not to include tenths of miles);
- (3) The date of the statement;
- (4) The lessee's printed name and current address;
- (5) The lessor's printed name and current address;
- (6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;
- (7) The date that the lessor notified the lessee of disclosure requirements;
- (8) The date that the completed disclosure statement was received by the lessor; and
- (9) The signature of the lessor

* * * * *

(e) Any electronic system maintained by a lessor for the purpose of complying with the requirements of this section shall meet the requirements of § 580.4(b) of this part.

■ 9. Revise § 580.8 to read as follows:

§ 580.8 Odometer disclosure statement retention.

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain, except as noted in paragraph (d), for five years a photostat, carbon, other facsimile copy, or electronic copy of each odometer mileage statement, which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order appropriate to business requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any attempts to alter it.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each written or electronic odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business

requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any attempts to alter it.

(c) Dealers and distributors of motor vehicles who are granted a power of attorney, except as noted in paragraph (d) of this section, by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy, or electronic copy of each power of attorney they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any unauthorized attempts to alter it.

(d) Any odometer disclosure statement made on an electronic title or electronic power of attorney shall be retained by the jurisdiction for a minimum of five years and made available upon request to dealers, distributors, and lessors for retrieval at their principal place of business and inspection on demand by law enforcement officials. Dealers, distributors, and lessors are not required to, but may, retain a copy of an odometer disclosure statement made on an electronic title or electronic power of attorney.

■ 10. Amend § 580.9 by revising the introductory text and paragraph (b) to read as follows:

§ 580.9 Odometer record retention for auction companies.

Each auction company shall establish and retain in physical or electronic format at its primary place of business in an order appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

* * *

- (b) The name of the transferee;

* * *

■ 11. Amend § 580.10 by revising paragraph (b)(2) to read as follows:

§ 580.10 Application for assistance.

* * * * *

- (b) * * *

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W41-326, Washington, DC 20590;

* * * * *

■ 12. Amend § 580.11 by revising paragraphs (a), (b)(2) through (4), and (c) to read as follows:

§ 580.11 Petition for approval of alternate disclosure requirements.

(a) A state may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of § 580.5, § 580.6, § 580.7, or § 580.13(f) of this part.

(b) * * *

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W41-326, Washington, DC 20590;

(3) Set forth the motor vehicle disclosure requirements in effect in the jurisdiction, including a copy of the applicable laws or regulations of the jurisdiction; and

(4) Explain how the jurisdiction's motor vehicle disclosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act.

* * * * *

(c) Notice of the petition and an initial determination pending a 30-day comment period will be published in the **Federal Register**. Notice of final grant or denial of a petition for approval of alternate motor vehicle disclosure requirements will be published in the **Federal Register**. The effect of the grant of a petition is to relieve a jurisdiction from responsibility to conform the Jurisdiction disclosure requirements with § 580.5, § 580.6, § 580.7, or § 580.13(f), as applicable, for as long as the approved alternate disclosure requirements remain in effect in that jurisdiction. The effect of a denial is to require a jurisdiction to conform to the requirements of § 580.5, § 580.6, § 580.7, or § 580.13(f), as applicable, of this part until such time as NHTSA approves any alternate motor vehicle disclosure requirements.

§ 580.12 [Removed and Reserved]

■ 13. Remove and reserve § 580.12.

■ 14. Revise § 580.13 to read as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

(a) If otherwise permitted by the law of the jurisdiction, the transferor may grant a power of attorney to their transferee for the purpose of mileage disclosure under one of the following conditions:

- (1) The transferor's physical title is held by a lienholder; or
- (2) The transferor's physical title is lost; or
- (3) The transferor's electronic title is held or controlled by a lienholder; or

(4) The transferor's electronic title cannot be accessed.

(b) The physical or electronic power of attorney shall contain, in part A, a space for the information required to be disclosed under paragraphs (c) through (f) of this section. If a state permits the use of a physical or electronic power of attorney in the situation described in § 580.14(a), the power of attorney must also contain, in part B, a space for the information required to be disclosed under § 580.14, and, in part C, a space for the certification required to be made under § 580.15.

(c) In connection with the transfer of ownership of a motor vehicle as described in paragraph (a) of this section, where the transferor elects to give their transferee a physical or electronic power of attorney for the purpose of mileage disclosure, the transferor must appoint the transferee their attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the physical or electronic power of attorney form issued by the jurisdiction in which the transfer occurs. This disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's printed name and current address;

(4) The transferee's printed name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the physical or electronic power of attorney form shall refer to the federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the jurisdiction may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction.

(e) In addition to the information provided under paragraphs (c) and (d) of this section:

(1) The transferor shall certify that to the best of their knowledge the odometer reading reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, they shall include a statement to that the mileage exceeds mechanical limits; or

(3) If the transferor knows the odometer reading differs from the

mileage and the difference is greater than that caused by a calibration error or does not reflect a valid mileage display, they shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the physical or electronic power of attorney, which shall include their printed name, and make a copy of the power of attorney form available to the transferor.

(g) Upon receipt of the transferor's physical or electronic title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the physical or electronic power of attorney. The transferee shall submit the physical or electronic power of attorney to the jurisdiction that issued it with the actual physical or electronic title when the transferee submits a new title application. The jurisdiction shall retain the physical or electronic power of attorney form and physical or electronic title for a minimum of three years or a period equal to the state titling record retention period, whichever is shorter. If the mileage disclosed on the physical or electronic power of attorney is lower than the mileage appearing on the physical or electronic title, the power of attorney is void and the transferee shall not complete the mileage disclosure on the title unless:

(1) The transferor has included a statement that the mileage exceeds mechanical limits; or

(2) The transferor has included a statement that the odometer reading does not reflect the actual mileage.

(h) A jurisdiction may permit submission of a physical power of attorney in an electronic format such as by scanning or imaging.

■ 15. Revise § 580.14 to read as follows

§ 580.14 Power of attorney to review title documents and acknowledge disclosure.

(a) In circumstances where part A of a physical power of attorney form has been used pursuant to § 580.13 of this part, and if otherwise permitted by the law of the jurisdiction, a transferee may grant power of attorney to their transferor to review the physical or electronic title and any physical reassignment documents, if applicable, for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the physical or electronic title. The power of attorney shall be on part B of the physical or electronic

power of attorney referred to in § 580.13(a), which shall contain a space for the information required to be disclosed under paragraphs (b), (c), and (d) of this section and, in part C, a space for the certification required to be made under § 580.15.

(b) Part B of the physical or electronic power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's printed name and current address;

(4) The transferee's printed name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the federal odometer law and state that providing false information or the failure of the person granted the power of attorney to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction.

(d) In addition to the information provided under paragraphs (b) and (c) of this section:

(1) The transferor shall certify that to the best of their knowledge the odometer reading reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, they shall include a statement to that the mileage exceeds mechanical limits; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by a calibration error or does not reflect a valid mileage display, they shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the physical or electronic power of attorney form, which shall include their printed name.

(f) The transferor shall give a copy of the physical power of attorney form to their transferee.

■ 16. Revise § 580.15 to read as follows:

§ 580.15 Certification by person exercising powers of attorney.

(a) A person who exercises a power of attorney under both §§ 580.13 and 580.14 must complete a certification that they disclosed the mileage on the physical or electronic title as it was provided to them on the physical or electronic power of attorney form, and that upon examination of the physical or electronic title and any applicable physical reassignment documents, the mileage disclosure made on the physical or electronic title pursuant to the physical or electronic power of attorney is greater than that previously stated on the physical or electronic title and applicable physical reassignment documents unless:

- (1) The transferor has included a statement that the mileage exceeds mechanical limits; or
 - (2) The transferor has included a statement that the odometer reading does not reflect the actual mileage.
- (b) This certification shall be under part C of the same form as the powers of attorney executed under §§ 580.13 and 580.14 and shall include:
- (1) The signature and printed name of the person exercising the power of attorney;
 - (2) The printed address of the person exercising the power of attorney; and
 - (3) The date of the certification.
- (c) If the mileage reflected by the transferor on the power of attorney is

less than that previously stated on the title and any reassignment documents, the power of attorney shall be void unless:

- (1) The transferor has included a statement that the mileage exceeds mechanical limits; or
- (2) The transferor has included a statement that the odometer reading does not reflect the actual mileage.

■ 17. Revise § 580.16 to read as follows

§ 580.16 Availability of prior title and power of attorney documents to transferee.

(a) In circumstances in which a power of attorney has been used pursuant to § 580.13, if a subsequent transferee elects to return to their transferor to sign the disclosure on the physical or electronic title and does not give their transferor a power of attorney pursuant to § 580.14, the transferor shall, upon the subsequent transferee's request, show that transferee a copy of the physical or electronic power of attorney that he they received from their transferor.

(b) Upon request of a transferee, a transferor who was granted a power of attorney by their transferor and who holds the title to the vehicle in their own name, must show to the transferee the copy of the previous owner's title and the physical or electronic power of attorney form.

■ 18. Amend § 580.17 by revising paragraphs (a)(3) and (4) and adding paragraph (a)(5) to read as follows

§ 580.17 Exemptions.

- (a) * * *
- (3)(i) A vehicle manufactured in or before the 2009 model year that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year;
- (ii) Example to paragraph (a)(3): For vehicle transfers occurring during calendar year 2019, model year 2009 or older vehicles are exempt.
- (4)(i) A vehicle manufactured in or after the 2010 model year that is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model year; or
- (ii) Example to paragraph (a)(4): For vehicle transfers occurring during calendar year 2030, model year 2010 or older vehicles are exempt.
- (5) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

* * * * *
Under authority delegated in 49 CFR 1.95, 501.5, and 501.7.

Jonathan Charles Morrison,
Chief Counsel.

[FR Doc. 2019-20360 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-59-P



FEDERAL REGISTER

Vol. 84

Wednesday,

No. 191

October 2, 2019

Part IV

Department of Transportation

49 CFR Part 29

Tribal Transportation Self-Governance Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 29**

[Docket No. DOT-OST-2018-0104]

2105-AE71

Tribal Transportation Self-Governance Program**AGENCY:** Office of the Secretary (OST), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The U.S. Department of Transportation (DOT or Department) requests comments on a proposed rule to establish and implement the Tribal Transportation Self-Governance Program (TTSGP or Program), as authorized by Section 1121 of the Fixing America's Surface Transportation (FAST) Act. The proposed rule was negotiated among representatives of Tribes and the Federal Government. The Program would provide to participating Tribes greater control and decision-making authority over their use of certain DOT funding for which they are eligible recipients while reducing associated administrative burdens. These proposed regulations include eligibility criteria, describe the contents of and process for negotiating self-governance compacts and funding agreements with the Department, and set forth the roles, responsibilities, and limitations on the Department and Tribes that participate in the TTSGP.

DATES: Written comments on this notice must be received on or before December 2, 2019. The Department will consider late comments to the extent practicable.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronically through the Federal eRulemaking Portal:* www.regulations.gov. Follow the online instructions for submitting comments.

- *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, 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.

- *Fax:* 1-202-493-2251.

All comment submissions must include the agency name, docket name, and docket number (DOT-OST-2018-0104) or Regulation Identifier Number

(RIN) for this rulemaking (2105-AE71). Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Physical access to the Docket is available at the Hand Delivery address noted above.

This document may be viewed online under the docket number noted above through the Federal eRulemaking portal, www.regulations.gov. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website, www.archives.gov/federal-register, and the Government Publishing Office's website, www.gpo.gov/fdsys. In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The 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 viewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Jackson, Designated Federal Officer, Office of the Secretary, (202) 366-9151 or via email at ronald.jackson@dot.gov, or Ms. Krystyna Bednarczyk, Office of the General Counsel, (202) 366-5283, or via email at krystyna.bednarczyk@dot.gov. Office hours are from 8 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**I. Background***A. Tribal Consultation*

Consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, the Department will hold four public information, education, and consultation meetings during the public comment period to explain the rule, answer questions, and take oral testimony. While a court reporter will document these meetings, attendees are encouraged to submit written public comments. Three meetings will be held in or near Indian country at the locations listed below and a fourth meeting will be held virtually. Additional information on the meetings may be found at www.transportation.gov/self-governance. The Department will hold meetings on the following dates and locations:

1. October 21, 2019, 8:30 a.m.–1 p.m. MDT, National Congress of American Indians Annual Convention, Albuquerque, NM.

2. November 5, 2019, 8:30 a.m.–12 p.m. CST, United Southern and Eastern Tribes Annual Meeting, Choctaw, MS.

3. November 19, 2019, Seattle, WA.

4. November 21, 2019, 1 p.m.–5 p.m. EST, Virtual Listening Session by Webinar, <https://connectdot.connectsolutions.com/sr500ausdot/>. Telephone: 800-683-4564; Access Code: 027757.

B. Authority for This Rulemaking

These proposed regulations would implement Section 1121 of the Fixing America's Surface Transportation (FAST) Act, Public Law (Pub. L.) 114-94, which was enacted on December 4, 2015, and is codified at 23 U.S.C. 207 (Section 207). This section directs the Secretary of Transportation (Secretary) to establish and carry out the Tribal Transportation Self-Governance Program (TTSGP). It also directed the Department to develop regulations to implement the program pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* The purpose of Section 207 is to transfer Federal funding for transportation-related programs to participating Tribes and to facilitate Tribal control over the delivery of transportation programs, services, functions and activities (PSFAs). Section 207 incorporates by reference select provisions of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, as amended (ISDEAA).¹ Congress enacted the ISDEAA to promote effective and meaningful participation by Tribes in the planning, conduct, and administration of Federal programs and services for Tribes. The ISDEAA authorizes Tribes to enter into self-determination contracts and self-governance compacts with the Departments of the Interior and Health and Human Services to assume operation of direct services for Tribes and administrative functions that support the delivery of these services by these Departments.

Implementation of the TTSGP through this rule would maintain and improve the Federal Government's unique and continuing relationship with and responsibility to Tribes, without a diminishment in any way of the trust responsibility of the United States to Indian Tribes and individual Indians that exists under treaties, Executive orders, or other laws and court decisions, and permit each eligible Tribe to choose the extent of its participation in the TTSGP. It would

¹ Following enactment of the FAST Act, Congress transferred the ISDEAA provisions within Title 25 of the U.S. Code. The docket contains a table that provides the relevant provisions and their current citations.

provide Tribes with control over the implementation of covered programs, implement a process for negotiating and seeking approval of an alternative funding mechanism by executing a compact and funding agreement with the Department, and authorize Tribes to plan, conduct, redesign, and administer, as appropriate and consistent with other statutory authorities, PSFAs that meet the needs of the individual Tribal communities. Finally, the TTSGP would provide a reduction in administrative burdens.

Section 207 is self-effectuating. It sets forth the following:

- To participate in the TTSGP, a Tribe's governmental body must authorize its participation in self-governance, and the Tribe must demonstrate, for the previous three fiscal years, financial stability and financial management capacity, and transportation program management capability.
- The Department and an eligible Tribe negotiate and enter into a written funding agreement that allows the Tribe to plan, conduct, consolidate, and administer programs that the Department would otherwise administer.
- A Tribe may redesign or consolidate certain programs and reallocate funds to best meet a Tribe's transportation needs.
- A Tribe may suspend performance under a compact and funding agreement in the absence of funding or, at the Tribe's election, retrocede all or a portion of the programs that are included in a funding agreement for any reason.
- Funding agreements must provide for advance payments to the participating Tribes for amounts equal to what the Tribe would be eligible to receive under contracts and grants under Section 207.
- Except as otherwise provided by law, the Secretary must interpret laws and regulations in a manner that will facilitate the inclusion of programs and funds in, and the implementation of, compacts and funding agreements.
- Each provision of Section 207, a compact, or a funding agreement must be liberally construed for the benefit of Tribes participating in self-governance and any ambiguity must be resolved in favor of Tribes.
- The Department has 90 days from the receipt of a request to waive the TTSGP regulations in which to approve or deny the request or the waiver request is deemed automatically approved.

C. Negotiated Rulemaking Process

Section 207(n) directs the Secretary to develop the regulations consistent with the Negotiated Rulemaking Act and to adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. Section 207(n) restricts membership of the negotiated rulemaking committee (committee) to Federal and Tribal government representatives. The Federal Highway Administration, on behalf of the Department, published a **Federal Register** notice (81 FR 24158) on April 25, 2016, announcing the intent to establish a committee and soliciting nominations for membership on the committee. The Department published a **Federal Register** notice (81 FR 49193) on July 27, 2016, announcing the formation of the committee and identifying 23 Tribal representatives, and 7 Federal representatives.

The first committee meeting was held in Sterling, VA on August 16–18, 2016, during which the committee negotiated Protocols, a set of written procedures under which the committee would operate.² A total of 11 meetings of the full committee were then held in different locations throughout the country.³ The committee members and technical advisors organized themselves into two work groups and used the scheduled committee meetings to develop draft materials and exchange information. The committee's meeting minutes and any materials approved by the full committee were made a part of the official record.

There were no committee meetings between December 2016 and January 2018, during which time, the Office of the Secretary assumed responsibility for the rulemaking. The Department published a **Federal Register** notice (82 FR 60571) on December 21, 2017, announcing a committee meeting in January 2018. The full committee reconvened in Sterling, VA on January 8–12, 2018. The committee discussed a draft document that consolidated the products of the committee work groups. The January 2018 meeting was followed by a one-day committee meeting in February 2018. These meetings were

² Documents adopted by the committee, including the Protocols and meeting minutes, are available at fhwa.dot.gov/programs/ttp/ttsgp/.

³ The December 2016 meeting did not achieve a quorum of committee members due to inclement weather and subsequent air travel flight cancellations. Those present participated in the established work groups to continue to develop and review proposed regulatory language, and the committee adopted that work product at the January 2018 meeting.

intended to gather information from the full committee to clarify areas of disagreement, identify the issues for which the committee had yet to discuss or propose text, and ensure the Federal members clearly understood how the negotiated provisions on which the committee previously reached consensus reflected statutory mandates.

Next, the committee met in Washington, DC at Department headquarters on June 18–19, 2018. In advance of the meeting, the Department distributed a revised discussion draft, and a crosswalk comparison of the January and June 2018 drafts, for consideration by the full committee. The Tribal representatives attended the June 2018 committee meeting but raised several objections. They believed that the draft being submitted to the committee had not been prepared mutually through a negotiated process involving both the Department and Tribal representatives. On June 19, 2018, the Tribal representatives suspended negotiations based on their objections. As such, the committee did not approve any meeting minutes or documents.

Concurrent with its decision to suspend negotiations, the Tribal representatives submitted a letter⁴ to the Department proposing new timelines to conclude negotiations, setting forth a number of requests and conditions that must be met before the Tribal representatives would agree to resume negotiations. In order to meet the statutory time frame for publication of a draft and final rule, the Department declined the request of Tribal committee representatives to delay publication of the draft rule. However, negotiations resumed after enactment, on the August 14, 2018 of Public Law 115–235, which extended the statutory deadline to issue the proposed and final rule.

At the request of the Tribal representatives, the Department retained the services of the Federal Mediation and Conciliation Service (FMCS), a neutral third-party, to facilitate subsequent negotiations. The Department and the Tribal representatives subsequently worked through their differences with the assistance of FMCS.

In October 2018, the Tribal representatives submitted to the Department a revised discussion draft for the committee's consideration. With assistance from FMCS, the committee resumed negotiations in Washington, DC, between October 29–November 3, 2018. At the recommendation of FMCS, the committee appointed a drafting

⁴ The letter is available in the docket.

subcommittee, composed of nominated committee members and technical advisors, to develop recommendations and draft regulatory text for consideration by the committee. The committee directed the work of the drafting subcommittee.

Between November 2018 and February 2019, the FMCS convened the drafting subcommittee virtually and in Washington, DC to develop recommendations and proposed regulatory text for the committee's negotiation. After consulting with the Designated Federal Officer (DFO) and the Tribal Co-Chairs, the FMCS convened the committee in Shawnee, Oklahoma on March 18–19, 2019, followed by a two-day drafting subcommittee meeting on March 20–21, 2019. During the committee meeting, the committee reached tentative agreement on several proposed regulatory sections and provided additional direction to the drafting subcommittee. Finally, the committee authorized FMCS and the drafting subcommittee to continue to negotiate additional recommendations and to propose regulatory language addressing the remaining topics.

FMCS convened the drafting subcommittee in Washington, DC on April 1–4, April 23–26, and May 20–23, 2019, to develop the remaining provisions of the draft rule for the committee's consideration. After consulting with the DFO and the Tribal Co-Chairs, FMCS convened the committee in Scottsdale, Arizona on June 3–6, 2019. At the meeting, the drafting subcommittee presented the proposed regulatory language to the committee, identified a limited number of non-consensus items that remained outstanding, and provided recommendations and preferred language addressing these areas of disagreement. The committee reached tentative agreement on most of the rule and provided additional direction to the drafting subcommittee on the outstanding provisions. The committee authorized the drafting subcommittee to complete the draft rule for the committee's review and agreement.

The drafting subcommittee met in Washington, DC on June 25–26, 2019, to complete its work. On June 26, 2019, FMCS facilitated the subcommittee's briefing of the committee on the draft rule. The committee reached consensus on the draft rule, including the description of the disagreement items discussed below. The Tribal Co-Chairs and the DFO confirmed the committee's consensus determination to submit the draft rule to the Department.

II. Summary of the Proposed Regulations

The following summary describes the Department's proposed regulations to implement the TTSGP. Except for four areas of disagreement discussed below, the proposed regulations are the product of consensus. The Department seeks public comment on the proposed rule and the non-consensus items noted below.

Subpart A—General Provisions

This subpart would set forth the purpose and authority of these regulations, Departmental policy, effect of these regulations on existing Tribal rights, the Department's obligation to consult with self-governance Tribes, and definitions. It would clarify the prospective effect of these regulations and address the status of a participating Tribe's existing Tribal Transportation Program (TTP) Agreement entered into under the authority of 23 U.S.C. 202 to a compact and funding agreement. Finally, it would clarify the effect of 23 U.S.C. 207 on requirements contained in Federal program guidelines, manuals, or policy directives.

The definition provision would define the phrase "programs, services, functions, and activities" or "PSFAs." The Department does not deliver PSFAs on behalf of Tribes; Tribes instead carry out PSFAs using the five categories of funding eligible to be included in a funding agreement between the Department and the Tribe.

Subpart B—Eligibility and the Negotiation Process

This subpart would identify the eligibility requirements for a Tribe or Tribal consortium (collectively "Tribe") to participate in the Program. Tribes must demonstrate financial stability and financial management capability, and transportation program management capability to be eligible to participate in the TTSGP. The regulation would provide three means by which Tribes may demonstrate financial stability and financial management capacity. First, the regulation would set forth Section 207's conclusive evidence standard. This regulation would also set forth a new, sufficient evidence standard for Tribes subject to the Single Audit Act that currently conduct business with DOT through the TTP or a DOT grant award and have no uncorrected significant and material audit exceptions in their required single audits. Finally, the regulation would introduce a standard for Tribes without a mandate to comply with the Single Audit Act that currently conduct

business with DOT to request eligibility in DOT's discretion.

Tribes that would meet the sufficient evidence standard are well placed to participate in the DOT self-governance program—they conduct audits under the Single Audit Act, demonstrate that they do not have material and significant audit exceptions, and demonstrate transportation program capability. While TTP Agreements are "in accordance with the ISDEAA," Tribes are subject to Federal Highway Administration (FHWA) oversight when they administer TTP funds. Tribes plan, budget, prioritize, and otherwise manage their Tribal transportation programs. The sufficient evidence standard recognizes that Tribes that successfully work with the FHWA under TTP Agreements and successfully manage grants for the maintenance, rehabilitation, and construction of transportation facilities should receive the benefits Congress intended in enacting the TTSGP.

The regulation would also provide a discretionary standard under which Tribes that do not meet the audit threshold of the Single Audit Act may participate in the Program if the necessary financial assurances are in place. This option is consistent with FHWA practice in administering the TTP provided the Tribe demonstrates financial capacity. FHWA has long permitted Tribes not subject to the Single Audit Act to participate, provided they undergo an independent audit and provide evidence demonstrating no uncorrected significant and material audit findings. DOT has determined that some smaller-funded Tribes have worked well with DOT under TTP Agreements as well as under the Federal Transit Administration's Tribal Transit Program. The Department does not want to compel those Tribes to join a consortium to be eligible for the DOT self-governance program.

The regulation also would provide for technical assistance, to the extent the Department has the resources and expertise, to Tribes that do not meet the criteria for financial stability and financial management capacity due to uncorrected significant and material audit exceptions. While the Department will not substitute its judgement for that of another agency where the audit reveals findings related to a non-DOT program, the Department may provide technical assistance for audit exceptions related to DOT programs. In these instances, a Tribe can work with the Department to correct those exceptions so that they come into compliance and demonstrate financial stability and

financial management capacity under the conclusive, sufficient, or discretionary evidence standards.

This regulation also would describe the evidence the Department would consider in making the discretionary determination that a Tribe has demonstrated transportation program management capability to be eligible to participate in the Program. The Department will use these criteria to evaluate the totality of the evidence presented in support of the eligibility application. Finally, this subpart would describe the negotiation process a Tribe must follow to enter into a compact and funding agreement with the Department to participate in the TTSGP.

The United States Department of the Interior (DOI) operates the DOI Tribal Self-Governance Program pursuant to Title IV of ISDEAA, as amended (codified at 25 U.S.C. 5301 *et seq.*) and jointly administers with FHWA the TTP. This subpart does not alter, affect, modify or otherwise change the eligibility requirements under 25 U.S.C. 5362, or implementing regulations at 25 CFR part 1000, for a Tribe or Tribal consortium seeking to participate in the DOI Tribal Self-Governance Program. Nothing in this proposed rule shall be construed to diminish or otherwise affect the authority of the Secretary of the Interior to carry out and administer the DOI Tribal Self-Governance Program. Additionally, this subpart does not alter or otherwise effect existing TTP contracting options available to Tribes with DOI.

Subpart C—Final Offer Process

This subpart would set forth the final offer process that a Tribe may invoke during negotiation with the Department of a compact and funding agreement. It is the Department's intent that a Tribe should only use the final offer process when there is a negotiation impasse and not before the parties have fully explored an area of disagreement. This subpart also would set forth the Department's responsibilities in processing a final offer, the grounds for rejecting the Tribe's final offer, and the Tribe's rights to challenge an adverse decision related to the final offer.

Subpart D—Contents of Compacts and Funding Agreements

This subpart would identify what is included in a compact, funding agreements and amendments, the duration of such agreements, and the rights and responsibilities of the Department and a Tribe. It would clarify that, notwithstanding the effect of 23 U.S.C. 207(n)(4), the compacts and funding agreements must include the

requirements related to public health and safety associated with the funding under the relevant programs.

Subpart E—Rules and Procedures for Transfer of Funds

This subpart would set forth the five categories of Department funds that a Tribe may elect to include in its funding agreement and, with agreement of a State, the transfer of Federal-aid funds. This subpart also describes responsibilities of the Department with respect to transfer of such funds, including the time to transfer the funds, and other issues related to the funding provided to Tribes through their TTSGP compact and funding agreements, including the use of such funds via the funding agreement. This subpart also would address how these funds may be used for matching or cost participation purposes and investment standards. Finally, while § 29.401(c)(2) sets forth the requirement from Section 207(h)(2) that the Department include in a funding agreement amounts equal to the project-related administrative expenses (PRAE) incurred by the Bureau of Indian Affairs (BIA) that the Department would have withheld under the Tribal Transportation Program, the Department notes that it does not presently provide to the BIA any funds for PRAE.

Subpart F—Program Operations

This subpart includes information and instructions to Tribes that participate in the TTSGP. Topics covered in this subpart include: (1) Audits and cost principles; (2) management systems and standards; (3) procurement management systems and standards; (4) property management systems and standards; (5) recordkeeping requirements; (6) reporting; (7) technical assistance; (8) prevailing wages; (9) Indian preference; (10) environmental and cultural resource compliance; (11) Federal Tort Claims Act applicability, and (12) waiver of Program regulations. The technical assistance provision would clarify that the Department is committed to carrying out the principles of self-governance while also ensuring proper stewardship and oversight of Federal funds.

With respect to rights-of-way on Tribal lands, these regulations would not affect the Department of the Interior's (DOI's) authority. DOI will continue to exercise its authority relating to the application, review, grant, administration, and oversight of rights-of-way on Tribal lands under 25 U.S.C. 323–328 and 25 CFR part 169.

Subpart G—Withdrawal

This subpart would describe the process for a Tribe to withdraw from a consortium's TTSGP compact or funding agreement with the Department, including distribution of the Tribe's shares of TTSGP funding. It would clarify that the Department is not a party to internal consortium disputes and would provide notice to consortia that seek to participate in the TTSGP that its agreements should adequately address the circumstances under which a member Tribe may withdraw.

Subpart H—Retrocession

This subpart would clarify that a Tribe may voluntarily discontinue performing a portion or all of the PSFAs under its compact and funding agreement, and may return remaining funds to the Department in accordance with the process set forth in this subpart. It also would clarify the effect of a Tribe's retrocession on its eligibility, and sets forth how funds must be distributed when the retrocession takes effect.

Subpart I—Termination and Reassumption

This subpart would describe when and under what circumstances the Department may terminate a Tribe's compact and funding agreement.

Subpart J—Dispute Resolution and Appeals

This subpart would set forth procedures, including various alternative dispute resolution mechanisms, that a Tribe may use to resolve disputes with the Department arising before or after execution of a compact or funding agreement, as well as the appeal rights and procedures Tribes must use to appeal the Department's decisions to terminate a Tribe's compact and funding agreement. It would provide the process for filing and processing appeals from adverse decisions and the applicable burden of proof.

III. Key Areas of Disagreement

The committee did not reach consensus on four issues. These include: (1) Whether to establish an Office of Self-Governance in the Department and create a Self-Governance Advisory committee prior to or simultaneous with issuance of the final rule; (2) whether the title I ISDEAA provision, 25 U.S.C. 5325(a), relating to contract support costs (CSCs), is in conflict with Section 207; (3) whether the title I ISDEAA provision, 25 U.S.C. 5324(I), relating to lease payments to a Tribe for facilities a Tribe makes

available to the Program, is in conflict with Section 207; and (4) whether the Department may require in this rule that a Tribe must exhaust administrative remedies for pre-award decisions, other than final offers, as a pre-condition to the Tribe filing suit in Federal court.

Each area of disagreement is presented below, in order, by subpart and section, as appropriate. To the extent a disagreement could not be resolved, the Department has incorporated its language proposal into the proposed regulatory text, and the Tribal and Department views on these areas of disagreement are set forth below. The Department solicits comments on these areas of disagreement.

During the negotiated rulemaking, the committee addressed over two dozen general subject matter areas: (1) Congressional and Secretarial policy; (2) definitions; (3) technical assistance; (4) eligibility; (5) negotiating funding agreements and compacts, including final offer; (6) contents of compacts and funding agreements; (7) regulatory waivers and streamlining; (8) transfer of funds; (9) requirements, limitations, and uses of funding; (10) financial management, property management and procurement management systems and standards, and disposition of Federal property; (11) retrocession, termination and assumption; (12) withdrawal from a Tribal consortium; (13) appeals and dispute resolution, and Equal Access to Justice Act (EAJA); (14) applicability to the Program of ISDEAA provisions; (15) CSCs; (16) facility lease payments under 25 U.S.C. 5324(l); (17) limitations on Secretarial action related to transfer of funds; (18) environmental review; (19) Federal Tort Claims Act (FTCA) applicability; (20) reporting and auditing; (21) applicability of certain Federal laws and regulations, prevailing wages, and Indian preference; (22) respective roles and functions to implement the Program: Office of Self-Governance, officials, consultations, and advisory councils; (23) effect of the Program on Department authority concerning formula and discretionary or competitive grants and consolidation and redesign authority; (24) effect of Program on Tribal Transportation Program (TTP) agreements, Tribal rights and current agreements; and (25) Federal sources of supply and excess, surplus Federal property. The committee broke each area into questions and answers, and the vast majority of these topics were agreed to by the Federal and Tribal representatives, and are reflected in the NPRM.

A. Establishing an Office of Self-Governance and Establishing an Advisory Committee

1. Tribal View

Tribal representatives believe that the Department should establish an Office of Self-Governance in order to successfully administer the Program. This office would act as the point of contact for Tribes to learn about the Program and their eligibility to participate, and, over time, to provide knowledge and expertise to the Department relating to Indian Tribes and the TTSGP. Tribes believe this Office should be created as soon as practicable. The regulations do contemplate a Chief Self Governance Official who will handle all matters related to the TTSGP. It is the Tribal representatives' view that staffing an Office of Self-Governance and meeting with Indian Tribes, Tribal elected officials, and Tribal transportation, transit and highway safety staff prior to the rule taking effect would be indispensable to the Program and the Department, and would better guarantee the Department's successful implementation of the TTSGP. With respect to the establishment of a TTSGP Self-Governance Advisory Committee, Tribal representatives believe that Tribal advisory committees have proven for years to be indispensable assets to Tribes and the Department of the Interior's (DOI) Bureau of Indian Affairs (BIA), the Department of Health and Human Services' (HHS) Indian Health Service (IHS), and the Department's Federal Highway Administration. These committees provide recommendations to the agencies and information to their respective Tribes and regions to better administer these programs that are critical to the Indian Tribes and their citizens. These bodies were established by and are referenced in agency regulations. *See* 25 CFR 170.135–170.137 (Tribal Transportation Program Coordinating Committee), 1000.102 (DOI Self-Governance Advisory Committee), 42 CFR 137.25, 137.10, and 137.204 (IHS Self-Governance Committee). Tribal representatives feel that the Department will lose a valuable resource of Tribal knowledge and expertise by not establishing an advisory body to assist the Department in implementing the Program.

2. Department View

Section 207 does not require the establishment of an Office of Self-Governance, and it is not Federal agency practice to establish new offices in regulation. Establishing an office within the Department is a matter of internal

organization and management. These regulations are not the appropriate mechanism for resolving the Tribal representatives' recommendation.

The Department does not foreclose the possibility of establishing an Office of Self-Governance. The proposed regulations provide for a Chief Self-Governance Official, a flexible structure that may accommodate an office in the future. In the interim, the Deputy Assistant Secretary for Tribal Affairs liaises with Tribal representatives by providing information, making technical assistance available, and coordinating policy across the Department in support of self-governance activities.

The Department does not disagree that an advisory committee may provide important information to the Department as it begins to carry out the TTSGP. However, this regulation is not the appropriate mechanism for establishing an advisory committee. In addition, the Department may avail itself of other processes, such as the Tribal consultation provision in Subpart A, to solicit feedback and information from Tribes and self-governance experts as it begins the process of implementing the TTSGP.

B. Applicability of Contract Support Costs

1. Tribal View

Tribal representatives assert that section 207(l)(8) makes 25 U.S.C. 5325(a) applicable to the Program, and is not in conflict with Section 207 as a matter of law and policy. Section 207 requires payment of contract support costs (CSCs), which are primarily administrative costs, in support of funds transferred to Tribes under the TTSGP. The ISDEAA requires CSCs to be added to program funds otherwise made available by an agency to a Tribe “for the reasonable costs of activities which must be carried out by a Tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which . . . normally are not carried on by the respective Secretary in his direct operation of the program; or . . . are provided by the Secretary in support of the contracted program from resources other than those under contract.” 25 U.S.C. 5325(a)(2)(A) and (B). The Tribal Representatives contend that the Department should only find an ISDEAA provision “in conflict” with Section 207 if it would take away from the effectiveness of the Program and the statutory scheme established by Section 207. The Tribal position is that these provisions apply to the Department and are not in conflict with Section 207.

CSCs are an eligible expense that should be included in and paid in addition to the funds made available to a Tribe under the Program. The absence of appropriations specifically for CSCs in annual appropriations for the Department's formula-based and discretionary and competitive grant programs is not a legal basis to find 25 U.S.C. 5325(a) in conflict with Section 207. Tribal representatives believe that Section 207 requires the Department to fully fund CSCs.

Based on their experience with ISDEAA programs, Tribes believe that Tribal success in implementing ISDEAA agreements, especially with regard to financial management systems integrity, compliance with annual audits, and the good stewardship of Federal funds, depends on Federal agencies requesting the full level of Tribal need for CSC funds. These same principles apply to the TTSGP just as they do to health care, social services, and other programs Tribes administer under self-governance programs.

The basis for payment of CSCs is not whether the Department provided direct services to Tribes prior to Tribes carrying out ISDEAA agreements. Newly recognized Indian Tribes that seek to enter into ISDEAA contracts and funding agreements with the BIA and the IHS are eligible for full CSCs on the same basis as other Tribes even though the Federal agencies may never have provided direct services to these Tribes or their members. ISDEAA's CSC requirement is based on a Tribe's administrative needs associated with the Tribe performing PSFAs with Federal funds, not the agency funding history or structure for providing such funds.

Tribes carrying out self-governance programs face challenges paying for administrative costs that come along with running programs when CSCs are not fully funded. Administrative overhead costs are "mandatory" costs that Tribes must incur to properly account for and expend Federal funds. Tribes should not have to use their formula program funds or limited Tribal funds to cover such mandatory costs; this reduces the funds available to operate the programs Tribes administer under self-governance.

If the Department does not authorize the addition of CSC funds to assist the Tribe in carrying out the Tribe's PSFAs, Tribal representatives assert that the final rule should remain silent on the issue so that, should CSCs be determined to apply to the Program in the future, such funds can be added without changes to the rule.

2. Department View

The Department acknowledges that, except to the extent there are conflicts, 25 U.S.C. 5325(a) is made applicable to the Program by operation of Section 207(I)(8). However, pursuant to Section 207(I), the Department has preliminarily determined that 25 U.S.C. 5325(a) conflicts with Section 207(h), which mandates that the Secretary provide funds to Tribes in "an amount equal to" (1) the sum of funds the Tribes would receive under a funding formula or other allocation method established under title 23 and chapter 53 of title 49 of the U.S. Code added to "(2) such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project."⁵ The plain language of 23 U.S.C. 207(h) is a funding limitation, because the provision uses the phrase "an amount equal to." This limitation conflicts with the mandate in 25 U.S.C. 5325(a)(1) to provide to Tribes funds in an amount "not . . . less than" the agency would have provided to operate the program for the contract period, including supportive administrative functions." The limitation in 23 U.S.C. 207(h) also conflicts with the mandate in 25 U.S.C. 5325(a)(2) that requires the agency to "add[]" contract support costs (CSCs) to the amount provided under 25 U.S.C. 5325(a)(1). Accordingly, the Department is not obligated to pay CSCs to supplement the five categories of funds set forth in § 29.400.

Even absent a conflict, Tribes carrying out compacts and funding agreements under the Program would not incur CSCs. CSCs ensure that a Tribe does not experience diminution in program resources when PSFAs are transferred from the Federal Government to Tribal operation. Tribes carrying out their Tribal PSFAs with Department funding do not risk diminishing their program resources due to their participation in the Program because the Department never administered the activities to begin with. When Tribes enter the Program, they will not assume operation of a transportation program from the Federal Government and will not incur additional expenses associated with activities previously performed by the Federal Government for the benefit of Tribes or on their behalf. In the context of DOT's formula funding for Tribes, the funds appropriated for transfer to Tribes are either Tribal shares or residual

⁵ The Department does not withhold funds for the costs of the Bureau of Indian Affairs for project or program administration, and therefore anticipates that this amount will always be zero.

agency funds to perform inherent Federal functions such as program management and oversight. The competitive and discretionary grant programs are not programs that the Department previously performed and therefore CSC funding is not necessary to prevent a diminution in the competitive and discretionary grant program. Rather, these programs contemplate that Tribes would use a portion of the funds to cover administrative obligations, and the funding limitation in 23 U.S.C. 207(h) requires that the funds allocated to Tribes be used to offset any administrative obligations.

The Department administers two programs that solely benefit Tribes and that allocate funds to Tribes under a funding formula: The Tribal Transportation Program and the Tribal Transit Program. The Department does not plan, conduct, and administer a program or service that the Federal Government would have otherwise provided directly. Rather, the Department transfers funds to Tribes and authorizes them to plan, conduct, and administer the funds to deliver Tribal programs and services in accordance with their needs and priorities. The Department's administration of these programs is limited to program management and oversight, and other inherent Federal functions. The vast majority of other Departmental funding programs are non-formula, competitive and discretionary grant programs that are not solely for the benefit of Tribes and do not provide CSCs for non-Tribal recipients. Therefore, CSCs would not apply even if 25 U.S.C. 5325(a) were not in conflict with Section 207.

Nevertheless, Tribes may be able to recover some funding for the indirect costs they incur while administering a grant from the Department transferred in a funding agreement on the same basis as any other grantee. The payment of indirect costs would be governed by the Federal cost principles that apply to grants programs, as well as any applicable caps on indirect cost funding. To be clear, certain costs that Tribes seek to recover as CSCs under the TTSGP are generally available as an eligible and allocable expense of both DOT formula programs. Under these programs, Tribal recipients may use Federal financial assistance for eligible planning, operating, and capital expenses. Tribes may also use program funds for pre-award, startup, direct, indirect, and program oversight costs. However, this does not mean that additional funds have been authorized or appropriated for these expenses, and

there are no additional funds to provide to Tribes for CSCs. Based on the Department's preliminary determination, the funding limitation in Section 207(h) does not allow any other outcome.

C. Facility Leases and Facility Support Costs (§ 29.420)

1. Tribal View

The Tribal representatives and the Department disagree on whether the Department must enter into a lease with a Tribe when it requests to use a facility for the administration and delivery of services under a TTSGP funding agreement. Section 207(l)(8) incorporates by reference 25 U.S.C. 5324(l), which directs the Department to pay Tribes for the costs of leasing a facility that a Tribe (1) owns, leases, or holds a trust interest in; and (2) uses to carry out an ISDEAA agreement.

Tribal representatives disagree with the preliminary finding that ISDEAA provisions regarding facility leaseback options conflict with Section 207. Tribes assert that the lack of appropriations to the Department to give effect to the leasing provision of 25 U.S.C. 5324(l) of the ISDEAA is not a legal or policy basis for finding the provision to be "in conflict" with the purposes of the TTSGP. The proper question to ask is whether it advances the purposes and goals of the TTSGP for the Department to compensate a Tribe for the Tribe's use of a facility leased or otherwise made available by the Tribe to carry out the PSFAs that are eligible for inclusion in a compact and funding agreement under the Program. By covering necessary facilities costs, lease payments would free up funding for construction, maintenance, and other transportation projects, furthering the goals of the Program. Far from conflicting with the TTSGP, the 25 U.S.C. 5324(l) leasing provisions empower the Program to do more.

2. Department View

The Department acknowledges that Section 207(l)(8) incorporates by reference 25 U.S.C. 5324(l), which directs the Department to compensate Tribes for the use of a facility for the administration and delivery of services under ISDEAA. However, pursuant to Section 207(l), the Department has preliminarily determined that 25 U.S.C. 5324(l) conflicts with the funding limitation in Section 207(h). If the Department provided additional funding under 25 U.S.C. 5324(l), the amount of funds would never equal the amount contemplated by Section 207(h).

Currently, the Tribal Transportation Program and the Tribal Transit Program makes the construction or leasing of transportation facilities, including certain facility support costs, an eligible cost of each program's funds. Finally, the Department notes that additional funds have not been authorized or appropriated for these expenses, and there are no additional funds to provide to Tribes with facility lease-back and facility support costs. This is consistent with the funding mandate of Section 207(h).

D. Exhaustion of Administrative Remedies (§ 29.906)

1. Tribal View

The Tribal representatives object to the Department's inclusion of a requirement to exhaust administrative remedies for pre-award decisions (except appeals of the rejection of a final offer) before initiating a civil action against the Department in the U.S. District Courts. Tribal representatives argue that there is no statutory mandate in Section 207 or the incorporated provisions of the ISDEAA that requires a Tribe to exhaust administrative remedies before a Tribe may bring suit in Federal court. Regulations of the DOI and IHS, which implement titles I, IV and V of the ISDEAA, do not include an exhaustion provision; Tribes assert the Program should operate in the same way. Tribal representatives assert that Tribes may incorporate section 110 of the ISDEAA, 25 U.S.C. 5331, in a compact or funding agreement by operation of section 207(l) and 25 U.S.C. 5396, which allows for a direct appeal to U.S. District Courts of an adverse agency decision without the need to exhaust administrative remedies. Tribal representatives assert that while some Tribes may choose to exhaust administrative remedies before considering further recourse, the decision of whether to pursue additional administrative remedies is an act of self-determination and self-governance that a Tribe should make and that the Department should defer to the principles of self-governance on this issue.

2. Department View

In negotiating the disputes and administrative appeal provisions, the committee requested the drafters to develop a simple, easy to follow dispute resolution process. Accordingly, the Department proposes a two-step process for pre-award disputes by which all initial decisions would be made by a Chief Self-Governance Official and appealed to a hearing official appointed

by the Office of the General Counsel. This requirement does not apply to appeals of the Department's denial of a final offer because Section 207 provides that a Tribe may proceed directly to U.S. District Courts, in lieu of an administrative appeal. The Department devised an efficient, timely, and responsive process that would ensure a proper record for certain pre-award disputes. While Section 207 does not include an express exhaustion requirement, the Department interprets the Administrative Procedure Act and Supreme Court precedent to grant the Department discretion to impose a requirement that Tribes exhaust their administrative remedies before proceeding to the U.S. district courts. Additionally, the Department disagrees that 25 U.S.C. 5331 provides direct review in U.S. District Courts. Instead, 25 U.S.C. 5331 addresses the proper venue and relief that can be granted for civil actions filed pursuant to this section, but does not address timing of when these civil actions may be brought.

E. Tribal Concerns Related To Transfer of Funds

While not a disagreement issue, the Tribal representatives want to solicit public comment on three sections in Subpart E addressing the timing for the transfer of funds. The committee agreed that the rule would require the Department to transfer funds included in a funding agreement within 30 days of the apportionment of funds from the Office of Management and Budget to the Department or, for discretionary and competitive grants, within 30 days of inclusion of the grant in a funding agreement. See § 29.403 (initial transfer), § 29.404 (funds not paid as part of the initial lump sum or initial periodic payment), and § 29.404 (discretionary and competitive grants).

Tribes initially asserted that the transfers should occur within 10 days of the apportionment of funds by the Office of Management and Budget to the Department, or 10 days after execution of the funding agreement covering grants, unless the funding agreement provides otherwise, in accordance with 25 U.S.C. 5388(a). The Tribal representatives agreed to the 30-day requirements because in some instances the Department may be able to make such transfers within 10 days if the Department's financial management systems permit, but could not do so in all instances. Tribes urge the Department to identify any limitations in the Department's financial management systems that would prevent the timely transfer of funds to

Tribes under the Program. The success of a Tribe's transportation project or program may depend on the expeditious transfer of Federal funds because many Tribes operate with very short construction seasons. It is the Tribes' view that the Department should improve its transfer process so that the vast majority of fund transfers occur within 10 days.

IV. Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improving Regulation and Regulatory Review, Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and USDOT Regulatory Policies and Procedures

The DOT, in consultation with the Office of Management and Budget, has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order (E.O.) 12866 or within the meaning of DOT regulatory policies and procedures. In addition, this action complies with the principles of E.O. 13563. After evaluating the costs and benefits of these proposed amendments, DOT anticipates that the economic impact of this rulemaking would be minimal. Tribes would not be required to participate in the TTSGP, so any costs associated with implementation would be voluntarily assumed by the Tribes. The proposed rule would enable Indian Tribes to exert greater control and decision-making authority over the administration of funds awarded under other statutorily authorized formula fund and competitive or discretionary grant programs eligible for inclusion in the program. The rule describes the process and procedures for negotiating compacts and annual funding agreements with Tribes and intertribal consortia. The rule would not impose a compliance burden on the economy generally, does not introduce any new funds into the stream of commerce, and does not adversely affect in any material way the economy, productivity, competition, jobs, the environment, public health or safety. Finally, this proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866. For additional information about the costs and benefits of this rulemaking, please see the Regulatory Impact Analysis, which is available in the Docket.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C.

601–612), DOT has evaluated the effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, the Department anticipates that this action would not have a significant economic impact on small entities. The Department only foresees this rule having an impact on the Federal Government and Indian Tribes, which are not considered to be small entities for purposes of this Act. The DOT certifies that this document will not have a significant economic effect on a substantial number of small entities.

C. Unfunded Mandates Reform Act

The DOT has determined that this proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$151 million or more in any one year (when adjusted for inflation) in 2012 dollars. In addition, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have the authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The funding programs subject to this rulemaking permit this type of flexibility.

D. Executive Order 12630, Taking of Private Property

The DOT has analyzed this NPRM under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The DOT does not anticipate that this proposed action would affect taking of private property interests or otherwise have taking implications under E.O. 12630.

E. Executive Order 13132, Federalism Assessment

The DOT has analyzed this NPRM in accordance with the principles and criteria contained in E.O. 13132. This NPRM would impact Tribal governments, but there is no federalism impact on the relationship or balance of power between the United States and Indian Tribes affected by this action. The DOT has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The DOT has also determined that this action would not preempt any State law

or regulation, or affect the States' ability to discharge traditional State governmental functions.

F. Executive Order 12988, Civil Justice Reform

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that the proposed rule does not contain collection of information requirements for the purposes of the PRA.

H. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined preliminarily that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* The purpose of this rulemaking is to establish a departmental Tribal transportation self-governmental program. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking, but the Department invites comment on this determination.

I. Executive Order 13175, Tribal Consultation

The Department has analyzed this NPRM under E.O. 13175, and has determined that because the NPRM would uniquely affect Tribal governments, it would follow departmental and Administration procedures in consulting with Tribal governments on the NPRM. We have

evaluated this action for potential effects on federally recognized Indian Tribes and have determined that the NPRM would not impose substantial direct compliance costs on Indian Tribal governments, would not preempt Tribal law, would not have any potentially adverse effects, economic or otherwise, on the viability of Indian Tribes. Rather, this action will reduce the administrative burden of Indian Tribes participating in this program. Therefore, a Tribal summary impact statement is not required.

The Department initiated a negotiated rulemaking process, with both Tribal and Federal representatives, which the Department asserts fulfills its obligations to consult, as appropriate. The results of these ongoing negotiated rulemaking meetings were periodically reported and discussed in other Federal and Tribal fora. The Tribal and Federal representatives reached consensus on the rule text and Preamble, except for the four areas of disagreement discussed above. The DOT will continue to seek the input of Tribes through the comment period and until publication of the Final Rule.

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

The DOT has analyzed this proposed action under E.O. 13045. The DOT certifies that this proposed action would not cause an environmental risk to health or safety that may disproportionately affect children.

K. Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 29:

Grant programs—transportation, Grant programs—Indians, Indians.

Issued on: September 27, 2019.

Elaine L. Chao,

Secretary of Transportation.

■ For the reasons set out in the preamble, the Department of Transportation proposes to add part 29 to title 49 of the Code of Federal Regulations to read as follows:

PART 29—TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM

Subpart A—General Provisions

Sec.

- 29.1 What is the purpose and authority for this part?
 29.2 What is the Department's policy for the Program?
 29.3 What is the effect of this part on existing Tribal rights?
 29.4 How do Departmental circulars, policies, manuals, guidance, or rules apply to a Tribe's performance under the Program?
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 29.6 Must the Department consult with Tribes regarding matters that affect the Program?
 29.7 What is the effect of this Program on existing Tribal Transportation Program agreements?
 29.8 What happens if more than one party purports to be the authorized representative of a Tribe?
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 29.102 What information should the Tribe provide to the Department when it expresses its interest in negotiating a compact, funding agreement, or amendment?
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 29.105 Will negotiations commence or conclude within a specified time period?
 29.106 What are best practices to pursue negotiations?
 29.107 What recourse does the Department or the Tribe have if the negotiations reach an impasse?
 29.108 May the Department and the Tribe continue to negotiate after the Tribe submits a final offer?
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- 29.515 When procuring property or services with funds included in a funding agreement, can a Tribe follow its own procurement standards?
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- 29.520 How may a Tribe use existing Department facilities, equipment, or property?
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- 29.523 If a compact or funding agreement (or portion thereof) is retroceded, reassumed, terminated, or expires, may the Department reacquire title to property purchased with funds under any compact and funding agreement or excess or surplus Federal property that was donated to the Tribe under the Program?

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- 29.524 What technical assistance is available from the Department?

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- 29.525 Do the wage and labor standards in the Davis-Bacon Act apply to employees of a Tribe?

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- 29.526 Does Indian preference apply to PSFAs under the Program?
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- 29.528 What compliance with environmental and cultural resource statutes is required?

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- 29.529 Is the Federal Tort Claims Act applicable to a Tribe when carrying out a compact and funding agreement under the Program?
- 29.530 What steps should a Tribe take after becoming aware of a Federal Tort Claim?
- 29.531 Is it necessary for a compact or funding agreement to include any terms about FTCA coverage?
- 29.532 Does FTCA cover employees of the Tribe who are paid by the Tribe from funds other than those provided through the compact and funding agreement?
- 29.533 May persons who are not Indians assert claims under FTCA?
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- 29.535 What is the process for regulation waivers under this part?

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- 29.600 May a Tribe withdraw from a consortium?
- 29.601 When does a withdrawal become effective?
- 29.602 How are funds redistributed when a Tribe fully or partially withdraws from a compact and funding agreement and elects to enter into a compact with the Department?
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Subpart H—Retrocession

- 29.700 May a Tribe retrocede a PSFA and the associated funds?
- 29.701 How does a Tribe notify the Department of its intention to retrocede?
- 29.702 What happens if the Department of the Interior determines that it provides the transportation services the Tribe intends to retrocede?
- 29.703 What happens if the Department of the Interior determines that it does not provide the transportation services the Tribe intends to retrocede?
- 29.704 What is the effective date of a retrocession?
- 29.705 What effect will a retrocession have on a Tribe's right to compact under the Program?
- 29.706 Will retrocession adversely affect future funding available for the retroceded program?

Subpart I—Termination and Reassumption

- 29.800 When can the Department reassume a compact or funding agreement?
- 29.801 Can the Department reassume a portion of a compact or funding agreement and the associated funds?

- 29.802 What process must the Department follow before termination of a compact or funding agreement (or portion thereof)?
- 29.803 What happens if the Department determines that the Tribe has not corrected the conditions that the Department identified in the notice?
- 29.804 When may the Department reassume?
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- 29.900 What is the purpose of this subpart?
- 29.901 Can a Tribe and the Department resolve disputes using alternative dispute resolution processes?
- 29.902 Does the Equal Access to Justice Act apply to the Program?
- 29.903 What determinations may not be appealed under this subpart?

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- 29.904 What are pre-award decisions that a Tribe may appeal?
- 29.905 To whom does a Tribe appeal a pre-award decision?
- 29.906 Must a Tribe exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts for a pre-award decision?
- 29.907 When and how must a Tribe appeal a pre-award decision?
- 29.908 May a Tribe request an extension of time to file an administrative appeal to the hearing official?
- 29.909 When and how must the hearing official respond to the Tribe's appeal?
- 29.910 What is the Department's burden of proof for appeals of pre-award decisions?
- 29.911 What is the effect of a pending appeal on negotiations?

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- 29.912 What is a post-award dispute?
- 29.913 What is a claim under the Contract Disputes Act?
- 29.914 How does a Tribe file a Contract Disputes Act claim?
- 29.915 Must a Tribe certify a Contract Disputes Act claim?
- 29.916 Who bears the burden of proof in a Contract Disputes Act claim?
- 29.917 What is the Department's role in processing the Contract Disputes Act claim?
- 29.918 What information must the Chief Self-Governance Official's decision contain?
- 29.919 When must the Chief Self-Governance Official issue a written decision on the claim?
- 29.920 Is a decision of the Chief Self-Governance Official final?
- 29.921 Where may a Tribe appeal the Chief Self-Governance Official's decision on a Contract Disputes Act claim?
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- 29.923 What is the effect of a pending appeal?

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- 29.924 May a Tribe appeal the Department's decision to terminate a compact or funding agreement?
- 29.925 Is a Tribe entitled to a hearing on the record?
- 29.926 What rights do the parties have in an appeal of a termination decision?
- 29.927 What notice and service must the parties provide?
- 29.928 What is the Department's burden of proof for a termination decision?
- 29.929 How will the Department communicate its decision following a hearing on a termination decision?
- 29.930 May a party appeal the decision of an administrative law judge?
- 29.931 What is the effect of an appeal on negotiations?

Authority: 23 U.S.C. 207.

Subpart A—General Provisions

§ 29.1 What is the purpose and authority for this part?

(a) The regulations in this part implement the Tribal Transportation Self-Governance Program required by 23 U.S.C. 207 and set forth rules for compacts and funding agreements negotiated between the Department and eligible Tribes under the Program. Funding agreements may contain funds as set forth in 23 U.S.C. 207(d)(2)(A) and § 29.400.

(b) The Department prepared and issued these rules pursuant to 23 U.S.C. 207(n) with the active participation and representation of Tribes, consortia, Tribal organizations, and individual Tribal members, consistent with the negotiated rulemaking procedures.

§ 29.2 What is the Department's policy for the Program?

It is the Department's policy to:

(a) Recognize the unique government-to-government relationship with Tribes, including the right of Tribes to self-government, and to support Tribal sovereignty and self-determination;

(b) Encourage Tribes to participate in the Program;

(c) Affirm and enable the United States to fulfill its obligations to Tribes under treaties and other laws, and to ensure the continuation of the trust responsibility of the United States to Tribes and Indians that exist under treaties, other laws, and Executive orders;

(d) Interpret Federal laws and regulations to facilitate the inclusion of eligible funds in funding agreements under the Program to carry out Tribal PSFAs, except as otherwise provided by law;

(e) Consult with Tribes directly and meaningfully on policies that have

Tribal implications and affect the Program;

(f) Acknowledge that PSFAs performed by Tribes are an exercise of Tribal self-determination and self-governance; and that Tribes are responsible for day-to-day operation of PSFAs carried out under the Program, and accept responsibility and accountability for the use of funds and satisfactory performance consistent with the terms of funding agreements; and

(g) Liberally construe this part to effectuate 23 U.S.C. 207 for the benefit of Tribes participating in the Program.

§ 29.3 What is the effect of this part on existing Tribal rights?

(a) Nothing in this part requires a Tribe to apply to participate in the Program.

(b) A Tribe's decision to participate in the Program does not:

(1) Affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by the Tribe;

(2) Terminate, waive, modify, or reduce the trust responsibility of the United States to the Tribe or individual Indians; or

(3) Reduce the amount of the Tribe's formula or discretionary funding from the Department or impair the Tribe's ability to obtain funding from another Federal program.

§ 29.4 How do Departmental circulars, policies, manuals, guidance, or rules apply to a Tribe's performance under the Program?

A Tribe's performance under the Program is not subject to any Departmental circular, policy, manual, guidance, or rule, except for this part, unless the Tribe and Department otherwise negotiate and agree in the compact or funding agreement.

§ 29.5 Who is responsible for carrying out the functions connected with the Program?

The Department will carry out the Program, including making eligibility determinations; negotiating compacts and funding agreements with Tribes; overseeing compliance with Department requirements; and otherwise administering and implementing the Program consistent with this Part. As provided in § 29.402, Tribes are responsible for day-to-day management of the Tribe's PSFAs consistent with the compact and funding agreement.

§ 29.6 Must the Department consult with Tribes regarding matters that affect the Program?

Yes. The Department must consult with Tribes on matters relating to the Program. The Department will carry out

consultations in accordance with Executive Order 13175 and applicable Department policies, including the Department's Tribal Consultation Plan.

§ 29.7 What is the effect of this Program on existing Tribal Transportation Program agreements?

This Program does not terminate existing authority for a Tribe to enter into agreements with the Federal Highway Administration, or contracts or agreements with the Department of the Interior, for the Tribal Transportation Program. A Tribe may maintain its current contracts or agreements, or include Tribal Transportation Program funds in a funding agreement under this Program. A Tribe may only have one agreement at a time for the same funds.

§ 29.8 What happens if more than one party purports to be the authorized representative of a Tribe?

If more than one party purports to be the authorized representative of a Tribe during the negotiation of a compact, funding agreement, or amendment, the Department will notify the parties, consult with the Department of the Interior, defer negotiation or execution of any documents until such authority is clarified, and provide written notice to the parties of the Department's decision to defer.

§ 29.9 What definitions apply to this part?

Unless otherwise provided in this part:

Appeal means a request by a Tribe for an administrative or judicial review of a decision by the Department.

Chief Self-Governance Official means a Department official responsible for overseeing the Program and carrying out the responsibilities set forth in this part.

Compact means a legally binding and mutually enforceable written agreement between the Department and a Tribe entered into pursuant to 23 U.S.C. 207(c) that sets forth the general terms that will govern the Tribe's participation in the Program and affirms the government-to-government relationship.

Consortium means an organization or association of Tribes that is authorized by those Tribes to participate in the Program under this part and is responsible for negotiating, executing, and implementing compacts and funding agreements on behalf of its member Tribes.

Consultation means the process by which the Department and a Tribe engage in timely, substantive, and meaningful government-to-government communication, collaboration and participation, and exchange views in furtherance of the Federal trust responsibility and the principles of self-

governance, before any action is taken that will have Tribal implications as defined by Executive Order 13175, in accordance with the Department's Tribal Consultation Plan, Executive Order 13175, all subsequent Presidential Memoranda regarding Tribal consultation, and applicable Federal law.

Contractor means a third party who has entered into a legally binding agreement with a Tribe to provide goods or services.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Department means the U.S. Department of Transportation.

Discretionary or competitive grant means a grant in which the Federal awarding agency may select the award amount and recipients from among all eligible applicants in light of the legislative and regulatory requirements and published selection criteria established for a program.

Excess property is real or personal property under the control of a Federal agency, which is not required for the agency's needs and the discharge of its responsibilities.

Funding agreement means a legally binding and mutually enforceable written agreement between the Department and a Tribe entered into pursuant to 23 U.S.C. 207(d) that identifies the funds the Tribe will use to carry out its PSFAs, and sets forth the terms and conditions under which the Tribe will receive the funds.

Gross mismanagement means a significant, clear, and convincing violation of a compact, funding agreement, or regulatory or statutory requirements applicable to Federal funds included in a compact and funding agreement that results in a significant reduction of funds available for a PSFA carried out by a Tribe.

Imminent jeopardy means an immediate threat to a trust asset, natural resource, or public health and safety that is caused by the act or omission of a Tribe and that arises out of a failure by the Tribe to carry out the compact or funding agreement.

Indian means a person who is a member or citizen of a Tribe.

Indian Tribe or Tribe means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community (including colonies and rancherias) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In any case in which

an Indian Tribe has authorized another Indian Tribe, an intertribal consortium, or a Tribal organization to plan for or carry out PSFAs on its behalf under this part, the authorized Indian Tribe, intertribal consortium, or Tribal organization shall have the rights and responsibilities of the authorizing Indian Tribe (except as otherwise provided in the authorizing resolution or in Title 23 U.S. Code). In such event, the term Indian Tribe or Tribe as used in this part shall include such other authorized Indian Tribe, intertribal consortium, or Tribal organization.

Inherent Federal functions means those Federal functions that cannot legally be delegated to a non-Federal entity, including a Tribe.

Operating Administration means a component administration of the U.S. Department of Transportation.

Program means the Tribal Transportation Self-Governance Program established by 23 U.S.C. 207.

Project means any activity determined as being eligible under the U.S. Code title and program for which funds are being provided.

Programs, services, functions, and activities or PSFAs means programs, services, functions, and activities, or portions thereof, that a Tribe carries out using funds included in a funding agreement under the Program.

Real property means any interest in land together with the improvements, structures, and fixtures and appurtenances.

Reassumption means the termination, in whole or part, of a funding agreement and assuming or resuming the remaining funds included in the compact and funding agreement pursuant to 23 U.S.C. 207(f)(2)(A).

Receipt means the actual date on which a submission is received. With respect to the Department, receipt is the date on which the authorized Department official specified in this part receives the submission. Demonstration of receipt includes a date stamp, postal return receipt, express delivery service receipt, or any other method that provides receipt, including electronic mail.

Retrocession means the voluntary return of a Tribe's PSFA and associated remaining funds for any reason, before or on the expiration of the term of the funding agreement.

Secretary means the Secretary of Transportation.

Self-Determination Contract means a contract (or grant or cooperative agreement) entered into pursuant to Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321) between a Tribe and the

appropriate Secretary for the planning, conducting and administration of programs or services that are otherwise provided to Tribes.

Self-governance means the Federal policy of Indian self-determination and self-government rooted in the inherent sovereignty of Tribes, reflected in the government-to-government relationship between the United States and Tribes, and expressed in the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended, and the program of self-governance established under the Program.

State means any of the 50 States, the District of Columbia, or Puerto Rico.

Surplus government property means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration.

Technical assistance means the process by which the Department provides targeted support to a Tribe with a development need or problem.

Transit means regular, continuing shared ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income, excluding the transportation services set forth in 49 U.S.C. 5302(14)(B).

Tribal Transportation Program (TTP) means a program established in Section 1119 of Moving Ahead for Progress in the 21st Century (MAP-21), Public Law 112-141 (July 6, 2012), and codified in 23 U.S.C. 201 and 202. This program was continued under Fixing America's Surface Transportation Act (FAST Act), Public Law 114-94 (December 4, 2015).

TTP Agreement means an agreement between a Tribe and either the Federal Highway Administration or the Bureau of Indian Affairs pursuant to 23 U.S.C. 202 that authorizes a Tribe to carry out all but the inherently Federal functions of the TTP.

Tribal Organization means the recognized governing body of any Tribe; any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization and includes the maximum participation of Indians in all phases of its activities.

Subpart B—Eligibility and Negotiation Process

Eligibility

§ 9.100 What are the criteria for eligibility to participate in the Program?

(a) *Eligibility.* A Tribe is eligible to participate in the Program if—

(1) The Tribe requests participation in the Program by resolution or other official action by the governing body of the Tribe; and

(2) The Department determines that, over the 3 most recent fiscal years, the Tribe has demonstrated financial stability and financial management capability, and transportation program management capability in accordance with the criteria specified in 23 U.S.C. 207(b) and this section.

(b) *Financial stability and financial management capability—(1) Conclusive evidence.* A Tribe subject to the Single Audit Act demonstrates financial stability and financial management capability by providing evidence establishing that, during the preceding 3 fiscal years, the Tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Tribe's self-determination contracts or self-governance funding agreements with any Federal agency. This will be conclusive evidence of the required financial stability and financial management capability.

(2) *Sufficient evidence.* A Tribe subject to the Single Audit Act that has a TTP Agreement or a grant award provided by the Department may provide evidence establishing that, during the preceding 3 fiscal years, the Tribe had no uncorrected significant and material audit exceptions in its required single audit of the Tribe's Federal award programs. This will be sufficient evidence of the required financial stability and financial management capability.

(3) *Evidence without a mandate to comply with the Single Audit Act.* If a Tribe is not subject to the Single Audit Act, the Department will consider the following evidence to determine if the Tribe demonstrates financial stability and financial management capability:

(i) Evidence demonstrating that the Tribe has financial management systems and standards that meet or exceed the standards set forth in §§ 29.506–29.508 of this part; and

(ii) An independent audit containing no uncorrected significant and material audit exceptions that covers the preceding 3 fiscal years of the Tribe's self-determination contracts or self-governance funding agreements with any Federal agency, TTP agreements, or a grant award from the Department.

(4) *Evidence of management systems.* As part of the Department's eligibility determination under paragraph (b)(3) of this section, the Department may require a Tribe to demonstrate that it has the management systems in place that meet or exceed the standards required in §§ 29.506 through 29.511 and 29.516 of this part. The Department will confirm in writing within 90 days of receipt of any such submission by the Tribe whether the Tribe's management systems are or are not sufficient to meet the required standards.

(5) *Technical assistance.* At a Tribe's request, the Department will provide, to the extent feasible, technical assistance, such as feedback on management systems and standards or review of internal controls, to a Tribe with one or more uncorrected significant and material audit exceptions with the goal of assisting the Tribe to establish eligibility for the Program.

(c) *Transportation program management capability.* (1) In making the eligibility determination under 23 U.S.C. 207(b), the Department also must determine that a Tribe demonstrates transportation program management capability, including the capability to manage and complete projects eligible under title 23 and chapter 53 of title 49.

(2) To assist the Department in determining transportation program management capability, a Tribe may submit evidence including, but not limited to:

(i) Documentation showing that the Tribe has previously or is currently directing or carrying out transportation services, projects, or programs under a self-determination, self-governance, or TTP Agreement, or a grant award with the Department.

(ii) Documentation showing the extent to which the Tribe previously received Federal funding and carried out management responsibilities relating to the planning, design, delivery, construction, maintenance, or operation of transportation-related projects, and whether they were completed;

(iii) Documentation that the Tribe has established and maintains, as appropriate, a staffed and operational transportation or transit program, department, commission, board, or official of any Tribal government charged by its laws with the responsibility for transportation-related responsibilities, including but not limited to, administration, planning, maintenance, and construction activities. This documentation should identify the Tribal personnel, job descriptions, and expertise necessary to administer or implement PSFAs that the Tribe proposes to assume under the

Program. The documentation may also include resolutions, other authorizations, or proposed budgets demonstrating that the Tribe has taken steps to organize a Tribal office or department to address the transportation-related needs of the Tribe and how that entity has or will demonstrate transportation program management capacity; and

(iv) Documentation showing the completion of one or more transportation projects or operation of a program that is related to or similar to the PSFA the Tribe requests to include in a funding agreement negotiated between the Tribe and the Department. The Department will consider the number, complexity, and type of projects or programs that the Tribe describes as part of this determination. This documentation should address the substantive involvement of the Tribe in operating a transportation program, which may be demonstrated by:

(A) Involvement in the development of a completed and approved highway safety plan;

(B) Involvement in the development of a completed and approved plans, specifications and estimates design package for one or more transportation projects to be carried out with available funding;

(C) Involvement in the delivery of a completed and approved transportation construction project using Federal or non-Federal funds;

(D) Oversight or operation of a public transit project or public transit system;

(E) Oversight or operation of a transportation maintenance system; or

(F) Other information that evidences the transportation program management capabilities of the Tribe.

(4) *Other indicia of program management capability.* In determining transportation program management capability, the Department will consider any other criteria and evidence that a Tribe may submit, including the operation by the Tribe of non-transportation programs of similar complexity, size, administrative need, staffing requirement, or budget.

(d) *Program eligibility determination.*

(1) Within 15 calendar days of receipt of a Tribe's submission seeking an eligibility determination under this section to participate in the Program, the Department will notify the Tribe in writing to confirm that it has received the submission and notify the Tribe whether any evidence necessary to make the determination is missing.

(2) Within 90 days of receipt of a Tribe's submission of its financial management systems and standards pursuant to paragraphs (b)(3)(i) and

(b)(4)(i), the Department will notify the Tribe whether the systems and standards are sufficient to meet the standards set forth in §§ 29.506 through 29.508 of this part.

(3) Within 120 days of receipt of an initial submission, the Department will issue its determination of a Tribe's eligibility to participate in the Program. If the Tribe provides additional evidence at the Department's request to complete the application, the Department will have up to an additional 45 days to issue its determination of the Tribe's eligibility to participate in the Program. The determination will constitute final agency action which the Tribe may appeal in accordance with §§ 29.904 through 29.911.

Negotiations

§ 29.101 How does a Tribe commence negotiations for a compact, funding agreement, or amendment?

After the Department notifies a Tribe in writing that it is eligible to participate in the Program pursuant to § 29.100, the Tribe must submit a written request to the Chief Self-Governance Official to begin negotiating a compact, funding agreement, or amendment. The Tribe may send the request to *tsgp@dot.gov* or use any other method that provides receipt.

§ 29.102 What information should the Tribe provide to the Department when it expresses its interest in negotiating a compact, funding agreement, or amendment?

When a Tribe expresses its interest in negotiating a compact, funding agreement, or amendment, the written request need only request that the Department enter into negotiations for a compact, funding agreement, or amendment. To the degree the Tribe has the following information available to it, the request may include, as appropriate:

(a) Whether the Tribe wants to negotiate a compact, funding agreement, or amendment;

(b) The funding programs that the Tribe wants to include in the funding agreement or amendment;

(c) The terms the Tribe wants to include in the compact, funding agreement, or amendment;

(d) Any information or technical assistance the Tribe needs from the Department to assist in pursuing the negotiation process; and

(e) The Tribal official with authority to negotiate on behalf of the Tribe, the designated Tribal contact, relevant contact information, and, if applicable, the name and contact information of an

attorney authorized to represent the interests of the Tribe in the negotiation.

§ 29.103 How will the Department respond to the Tribe's written request?

Within 15 days of receipt of a Tribe's written request, the Department will notify the Tribe in writing of the identity of the designated representative(s) of the Department who will conduct the negotiation and, to the extent feasible, will provide to the Tribe the information requested by the Tribe consistent with § 29.102(d).

§ 29.104 Must the Department and the Tribe follow a specific process when negotiating compacts, funding agreements, and amendments?

The Department and the Tribe do not have to follow a specific process when negotiating compacts, funding agreements, and amendments. The Department and the Tribe should cooperate to develop a plan to address each issue subject to negotiation and provide the representatives an opportunity to address the Tribal proposals, legal or program issues of concern, the time needed to complete the negotiations, and the development of a term sheet.

§ 29.105 Will negotiations commence or conclude within a specified time period?

Unless the Department and the Tribe agree otherwise, negotiations will commence within 60 days of the Department's receipt of the Tribe's written request to negotiate a compact, funding agreement, or amendment. The Department and the Tribe should make every effort to conclude negotiations within 90 days from the date on which negotiations commence, unless the parties agree to extend the time period for negotiations. Negotiations may proceed by electronic mail, teleconferences, or in-person meetings.

§ 29.106 What are best practices to pursue negotiations?

(a) The parties should collaborate and provide a clear explanation of their positions and interests. Each party should provide timely and specific responses to proposals presented during negotiations in order to conclude negotiations as soon as possible within the period provided in § 29.105.

(b) In negotiating the applicable construction, design, monitoring, or health and safety requirements that apply to the PSFAs the Tribe carries out using funds included in a funding agreement, along with the other terms set forth in § 29.307, the parties should cooperate and will prioritize the reduction of administrative requirements on the Tribe when

negotiating the terms of the compact, funding agreement, or amendment to effectuate the purposes of self-governance.

(c) The parties should conduct the negotiations in order to reach agreement on as many items as possible, and to refine unresolved issues in order to avoid disputed terms. The negotiations should conclude with mutually agreed upon terms and conditions. If any unresolved issues remain, a Tribe may submit a final offer to the Department under subpart C of this part.

§ 29.107 What recourse does the Department or the Tribe have if the negotiations reach an impasse?

The Department and the Tribe should resolve disagreements by mutual agreement whenever possible. If the Tribe and the Department are unable to reach agreement by the agreed upon date for completing negotiations, the Tribe may request to participate in an alternative dispute resolution process pursuant to § 29.901, or it may submit a final offer to the designated Department representative in accordance with subpart C of this part.

§ 29.108 May the Department and the Tribe continue to negotiate after the Tribe submits a final offer?

The parties may continue negotiations after the Tribe submits a final offer by mutual agreement, and may execute the remaining parts of the compact, funding agreement, or amendment consistent with § 29.213.

§ 29.109 Who is responsible for drafting the compact or funding agreement?

It is the mutual obligation of the Department and the Tribe to draft the compact, funding agreement, or amendment. Either party may offer to prepare the initial draft for the other party's review.

Subpart C—Final Offer Process

§ 29.200 What is covered by this subpart?

This subpart explains the final offer process for resolving, within a specific timeframe, disputes that may develop in negotiation of a compact, funding agreement, or amendment.

§ 29.201 In what circumstances should a Tribe submit a final offer?

If the Department and the Tribe are unable to agree, in whole or in part, on the terms of a compact, funding agreement, or amendment, the Tribe may submit a final offer to the Department.

§ 29.202 How does a Tribe submit a final offer?

(a) A Tribe must submit a written final offer to the Department's designated representative and the Chief Self-Governance Official to *ttsgp@dot.gov* or send the final offer using any other method that provides receipt to: Chief Self-Governance Official, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) The document should be separate from the compact, funding agreement, or amendment and clearly identified as a "Final Offer—Response due within 45 days of receipt."

§ 29.203 What must a final offer contain?

A final offer must contain a description of the disagreement between the Department and the Tribe, the Tribe's final proposal to resolve the disagreement, including any draft proposed terms to be included in a compact, funding agreement or amendment, and the name and contact information for the person authorized to act on behalf of the Tribe. If the final offer is insufficient for the Department to make a decision, the Department will notify the Tribe and request additional information. A request for more information has no effect on deadlines for response.

§ 29.204 How long does the Department have to respond to a final offer?

The Department has 45 days to respond to the final offer. The 45-day review period begins on the date the Chief Self-Governance Official receives the final offer.

§ 29.205 How does the Department acknowledge receipt of a final offer?

Within 10 days of the Chief Self-Governance Official receiving the final offer, the Department will send the Tribe an acknowledgement of the final offer, together with documentation that indicates the date on which the Chief Self-Governance Official received the final offer. The Department's failure to send the acknowledgement does not constitute approval of the final offer.

§ 29.206 May the Department request and obtain an extension of time of the 45-day review period?

The Department may request an extension of time before the expiration of the 45-day review period. The Tribe may either grant or deny the Department's request for an extension. Any grant of extension of time must be in writing and signed by a person authorized by the Tribe to grant the extension before the expiration of the 45-day review period.

§ 29.207 What happens if the Department takes no action within the 45-day review period (or any extensions thereof)?

The final offer is accepted by operation of law if the Department takes no action within the 45-day review period (or any extensions thereof).

§ 29.208 What happens once the Department accepts the Tribe's final offer or the final offer is accepted by operation of law?

Once the Department accepts the Tribe's final offer or the final offer is accepted by operation of law, the Department must add the terms of the Tribe's final offer to the compact, funding agreement, or amendment and transfer funds, if appropriate, no later than 30 days after the apportionment of such funds by the Office of Management and Budget to the Department.

Rejection of Final Offers

§ 29.209 On what basis may the Department reject a Tribe's final offer?

The Department may reject a Tribe's final offer for any of the following reasons:

(a) The amount of funds proposed in the final offer exceeds the applicable funding level to which the Tribe is entitled;

(b) The subject of the final offer is an inherent Federal function that cannot legally be delegated to a Tribe;

(c) Carrying out the PSFA would result in significant danger or risk to public health or safety; or

(d) The Tribe is not eligible to participate in self-governance under section 23 U.S.C. 207(b).

§ 29.210 How does the Department reject a final offer?

The Department must reject a final offer by providing written notice to the Tribe based on the criteria in § 29.209 no more than 45 days after receipt of a final offer by the Chief Self-Governance Official, or within a longer time period as agreed to by the Tribe consistent with this subpart. The notice must explain the basis for the rejection of the final offer.

§ 29.211 Is technical assistance available to a Tribe to overcome rejection of a final offer?

Upon receiving a final offer, the Department must provide technical assistance to overcome the objections stated in the Department's rejection of a final offer.

§ 29.212 May a Tribe appeal the rejection of a final offer?

A Tribe may appeal the rejection of a final offer in accordance with §§ 29.904 through 29.911.

§ 29.213 If a Tribe appeals a final offer, do the remaining provisions of the compact, funding agreement, or amendment not in dispute go into effect?

If a Tribe appeals the rejection of a final offer, the parties may execute and make effective the remaining provisions of the compact, funding agreement, or amendment that are not subject to appeal.

Subpart D—Contents of Compacts and Funding Agreements

Compacts

§ 29.300 What is included in a compact?

A compact only includes the general terms that govern a Tribe's participation in the Program and such other terms as the parties mutually agree that will continue to apply from year to year, and affirms the government-to-government relationship between the Tribe and the Department. Such terms include the authority, purpose, and obligations of the Tribe and the Department. The written compact memorializes matters on which the Department and the Tribe agree. Language addressing disagreement between the Department and the Tribe will not be included in the compact.

§ 29.301 Is a compact required to participate in the Program?

A Tribe must have a compact in place to participate in the Program. A compact must be in effect between the Department and the Tribe before the Tribe may enter into a funding agreement with the Department. The Tribe may negotiate a compact at the same time it is negotiating a funding agreement, so long as the compact is executed prior to or concurrent with the funding agreement.

§ 29.302 What is the duration of a compact?

A compact remains in effect until it is terminated by mutual written agreement, retrocession, or reassumption under this part.

§ 29.303 May more than one Tribe enter into a single compact and funding agreement?

A consortium of two or more Tribes may participate in the Program on the same basis as an individual Tribe. A consortium may comprise a combination of one or more Tribes that may or may not be independently eligible under § 29.100, so long as the consortium is eligible.

§ 29.304 May a compact be amended?

A compact may be amended at any time by the mutual written agreement of the Tribe and the Department.

Funding Agreements

§ 29.305 When can a Tribe initiate negotiation of a funding agreement?

Concurrent with or after a Tribe has entered into a compact with the Department, the Department and Tribe will negotiate a funding agreement, consistent with §§ 29.101 through 29.109. The funding agreement is the legally binding written agreement that identifies the funds a Tribe will use to carry out its PSFAs, and sets forth the terms and conditions under which the Tribe will receive the funds.

§ 29.306 What is the duration of a funding agreement?

(a) The duration of a funding agreement is one year unless the parties negotiate a multiyear funding agreement or, for an initial funding agreement, a partial year agreement.

(b) Each funding agreement will remain in full force and effect until the parties execute a subsequent funding agreement, except when:

(1) A Tribe provides notice to the Department that it is withdrawing or retroceding funds for the operation of one or more PSFAs (or portions thereof) identified in the funding agreement;

(2) The Department terminates the funding agreement under 23 U.S.C. 207(f)(2); or

(3) The parties agree otherwise.

§ 29.307 What terms must a funding agreement include?

A funding agreement must set forth the following:

(a) The funds the Department will provide, including those funds provided on a recurring basis;

(b) The PSFAs the Tribe intends to carry out using the funds;

(c) The general budget category assigned to the funds;

(d) The time and method of transfer of funds;

(e) The responsibilities of the Department and the Tribe;

(f) Any applicable statutory limitations on the use of funds;

(g) Any statutory or negotiated reporting requirements;

(h) Any applicable Federal or federally approved design, construction, and monitoring standards, unless the Tribe's design, construction, and monitoring standards are consistent with or exceed such standards;

(i) Other Federal health and safety requirements that apply to the funds included in the funding agreement, unless the Tribe provides adequate assurance that its relevant health and safety requirements are consistent with or exceed such requirements;

(j) Any other provision agreed to by the Tribe and the Department; and

(k) Provisions authorizing the Department to terminate the funding agreement (in whole or in part) and reassume the remaining funding for transfer as appropriate.

§ 29.308 May the funding agreement include additional terms?

At a Tribe's request, the parties may incorporate into a compact or funding agreement any other provision of Title I of the Indian Self-Determination and Education Assistance Act, unless the Department determines there is a conflict between the provision and 23 U.S.C. 207. The Department will make the determination consistent with 23 U.S.C. 207(j).

§ 29.309 Will a funding agreement include provisions pertaining to flexible or innovative financing?

If the Department and a Tribe agree, a funding agreement will include provisions pertaining to flexible financing and innovative financing. In that event, the Department and Tribe will establish terms and conditions relating to the flexible and innovative financing provisions that are consistent with 23 U.S.C. 207(d)(2)(C).

§ 29.310 May a Tribe redesign, consolidate, reallocate, or redirect the funds included in a funding agreement?

A Tribe may redesign, consolidate, reallocate, or redirect funds included in the Tribe's funding agreement in any manner it considers to be in the best interest of the Indian community being served, subject to any statutory requirements specific to the funding program, provided that the funds are expended on projects identified in a transportation improvement program approved by the Department, where statutorily required, and used in accordance with the requirements in appropriations acts, title 23 of the U.S. Code, chapter 53 of title 49 of the U.S. Code, and any other applicable law. However, a Tribe must use any discretionary or competitive grant funds or 23 U.S.C. 202(a)(9) funds included in the funding agreement, for the purpose for which the funds were originally authorized.

§ 29.311 How is a funding agreement amended?

A funding agreement may be amended by the mutual written agreement of the Department and the Tribe as provided for in the funding agreement. The Department will not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the

Tribe, unless such terms are required by Federal law.

§ 29.312 Is a subsequent funding agreement retroactive to the end of the term of the preceding funding agreement?

When the Department and a Tribe execute a subsequent funding agreement, the provisions of such a funding agreement are retroactive to the end of the term of the preceding funding agreement.

Subpart E—Rules and Procedures for Transfer of Funds

§ 29.400 What funds may a Tribe elect to include in a funding agreement?

A Tribe may elect to include in a funding agreement the following funds:

(a) Funds provided to the Tribe under the Tribal Transportation Program identified in 23 U.S.C. 202 in accordance with the statutory formula set forth in 23 U.S.C. 202(b);

(b) Any transit funds provided to the Tribe under 49 U.S.C. 5311;

(c) Funds for any discretionary and competitive grant administered by the Department awarded to the Tribe for a transportation program under title 23 of the U.S. Code or chapter 53 of title 49 of the U.S. Code;

(d) Funds for any other discretionary and competitive grant for a transportation-related purpose administered by the Department otherwise available to the Tribe; and

(e) Federal-aid funds apportioned to a State under chapter 1 of title 23 of the U.S. Code if the State elects to provide a portion of such funds to the Tribe for a project eligible under 23 U.S.C. 202(a)(9) or formula funds awarded to a State under 49 U.S.C. 5311 that are allocated to the Tribe by the State, and at the election of both the Tribe and State are designated for the direct obligation of funds to the Tribe.

§ 29.401 What funds must the Department transfer to a Tribe in a funding agreement?

(a) Subject to the terms of a funding agreement, the Department must transfer to a Tribe all the funds provided for in the funding agreement.

(b) The Department must provide funds for periods covered by a joint resolution adopted by Congress making continuing appropriations and authorization extensions, to the extent permitted by such resolutions. The Department will defer payment of funds to the Tribe if the period of continuing appropriations is less than 35 days.

(c) The Department will include funds in a funding agreement in the amount equal to:

(1) The sum of the funds that the Tribe would otherwise receive in

accordance with a funding formula or other allocation method set forth in title 23 U.S.C. or 49 U.S.C. chapter 53; and

(2) Such additional amounts as the Department determines equal the amounts that would have been withheld, if any, for the costs of the Bureau of Indian Affairs to administer the program or project on behalf of the Tribe.

§ 29.402 Which entity is responsible for the funds included in a funding agreement?

The Tribe is responsible for implementing the Tribe's PSFAs using the funds included in a funding agreement and for administering the funds in accordance with this part. In addition, the Tribe must carry out its PSFAs in accordance with the funding agreement, and all applicable statutes and regulations identified in the funding agreement.

§ 29.403 When must the Department transfer to a Tribe the funds identified in a funding agreement?

When a funding agreement requires an annual transfer of funds to be made by the Department at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funds to be made to the Tribe, the Department will make the first transfer no later than 30 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

§ 29.404 When must the Department transfer funds that were not paid as part of the initial lump sum payment (or initial periodic payment)?

The Department must transfer any funds that were not paid in the initial lump sum payment (or initial periodic payment) within 30 days after the apportionment of such funds by the Office of Management and Budget to the Department, and the Department has determined any distribution methodologies, as applicable, and made other decisions regarding payment of those funds.

§ 29.405 When must the Department transfer funds for a discretionary or competitive grant?

If the Department selects a Tribe for a discretionary or competitive grant, and the Tribe elects to include the grant funds in its funding agreement, the Department will transfer the funds to a Tribe in accordance with the terms of the Notice of Funding Opportunity or as the Department and the Tribe may agree. The Department will transfer these funds no later than 30 days after the Department and the Tribe execute a

funding agreement or an amendment covering the grant.

§ 29.406 Does the award of funds for a discretionary or competitive grant entitle a Tribe to receive the same amount in subsequent years?

The award of funds for a discretionary or competitive grant does not entitle a Tribe to receive the same amount of funds in subsequent years.

§ 29.407 Does the award of funds for discretionary or competitive grants entitle the Tribe to receive contract support costs?

Funds awarded for discretionary and competitive grants do not entitle the Tribe to receive contract support costs, are not part of the amount required to be transferred by the Department pursuant to 25 U.S.C. 5325, and are not subject to the prohibition on the Department's ability to reduce funds in § 29.413(a)(4). However, a Tribe may use grant funds to cover overhead and administrative expenses associated with operation of the grant, as provided in the grant award.

§ 29.408 How may a Tribe use interest earned on funds included in a funding agreement?

A Tribe may retain interest earned on funds included in a funding agreement to carry out governmental or transportation purposes.

§ 29.409 May a Tribe carry over from one fiscal year to the next any funds that remain at the end of the funding agreement?

The period of availability for funds transferred to a Tribe in a funding agreement does not lapse, except where the Tribe receives funds pursuant to a discretionary or competitive grant award for which Congress authorizes a defined period of availability. After transfer to the Tribe, such funds will remain available until expended. If a Tribe elects to carry over funds from one fiscal year to the next, such carryover funds will not diminish the amount of formula funds the Tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

§ 29.410 May a Tribe use remaining funds from a competitive or discretionary grant included in a funding agreement?

A Tribe may use remaining funds from a competitive or discretionary grant included in a funding agreement, but only with written approval from the Department. The Department must determine that the use of such funds is consistent with the statutory requirements of the grant program, including purpose and time, and is for the project for which the grant was provided.

§ 29.411 Are funds included in a compact and funding agreement non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program?

Notwithstanding any other provision of law, funds included in a compact and funding agreement are non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

§ 29.412 May the Department increase the funds included in the funding agreement if necessary to carry out the Program?

The Department may increase the funds included in the funding agreement if necessary to carry out the Program. However, the Tribe and the Department must agree to any transfer of funds to the Tribe unless otherwise provided for in the funding agreement.

§ 29.413 How will the Department assist a Tribe with its credit requests?

At the request of a Tribe that has applied for a loan or other credit assistance from a State infrastructure bank or other financial institution to complete an eligible transportation-related project with funds included in a funding agreement, the Department will provide documentation in its possession or control to assist the Tribe.

§ 29.414 What limitations apply to Department actions related to transfer of funds associated with PSFAs?

The Department will not:

(a) Fail or refuse to transfer to a Tribe its full share of funds due under the program, except as required by Federal law;

(b) Withhold portions of such funds for transfer over a period of years;

(c) Reduce the amount of funds identified for transfer in a funding agreement to make funding available for self-governance monitoring or administration by the Department;

(d) Reduce the amount of funds required under the program in subsequent years, except pursuant to:

(1) A reduction in appropriations or change in the funding formula results from the previous fiscal year for the funds included in a funding agreement;

(2) A congressional directive in legislation or accompanying report;

(3) A Tribal authorization;

(4) A change in the amount of pass-through funds included in the funding agreement;

(5) A termination of the funding agreement (or portion thereof) due to a finding of gross mismanagement or imminent jeopardy pursuant to subpart I;

(6) Completion of a project, activity, or program for which competitive or

discretionary grant funds were provided or expenditure of all competitive or discretionary grant funds authorized by the Department under separate statutory authorities for an eligible project, activity, or program; or

(7) A final decision by the Department pursuant to subpart I to terminate a compact and funding agreement (or portions thereof) due to gross mismanagement or imminent jeopardy.

(e) Reduce the amount of funds identified in a funding agreement to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under the program, except that such prohibition is inapplicable when Congress authorizes the Department to set aside a portion of the funds for project monitoring and oversight related functions; or

(f) Reduce the amount of funds required under the Program to pay for costs of Federal personnel displaced by compacts and funding agreements.

§ 29.415 Does the Prompt Payment Act apply to funds transferred to a Tribe in a funding agreement?

The Prompt Payment Act, 39 U.S.C. 3901 *et seq.*, applies to the transfer of funds under this program.

§ 29.416 What standard applies to a Tribe's management of funds included in a funding agreement?

(a) A Tribe must invest and manage funds included in a funding agreement as a prudent investor would, in light of the purpose, terms, distribution requirements, and applicable provisions in the compact and funding agreement. This duty requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation, but in the context of the investment portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suited to the Tribe. In making and implementing investment decisions, the Tribe has a duty to diversify the investments unless, under the circumstances, it is prudent not to do so.

(b) The Tribe must:

(1) Conform to fundamental fiduciary duties of loyalty and impartiality;

(2) Act with prudence in deciding whether and how to delegate authority and in the selection and supervision of agents; and

(3) Incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the Tribe.

§ 29.417 Must a Tribe continue performance of the Tribal Transportation Program or the Tribal Transit Program under a compact and funding agreement if the Department does not transfer sufficient funds?

A Tribe does not have to continue performance of the Tribal Transportation Program (23 U.S.C. 202(b)) or the Tribal Transit Program (49 U.S.C. 5311(c)(1)) that requires an expenditure of funds in excess of the amount of funds included in a funding agreement. If at any time the Tribe has reason to believe that the total amount included in a funding agreement is insufficient, the Tribe must provide reasonable notice of such insufficiency to the Chief Self-Governance Official. If the Department does not increase the amount of funds included in the funding agreement for the Tribal Transportation Program or Tribal Transit Program, the Tribe may suspend performance of the program activity until such time as the Department transfers additional funds.

§ 29.418 May a funding agreement include transfers of State funds?

(a) A State may elect to provide a portion of Federal-aid funds apportioned to the State under chapter 1 of title 23 of the U.S. Code to an eligible Tribe for a project eligible under 23 U.S.C. 202(a).

(b) If a State provides such funds, the transfer may occur in accordance with 23 U.S.C. 202(a)(9), or the State may transfer the funds back to the Department, and the Department will transfer the funds to the participating Tribe through the Tribe's funding agreement.

(c) If a State provides such funds, the Tribe (and not the State) will be responsible for constructing and maintaining any projects carried out using the funds and for administering and supervising the projects and funds in accordance with 23 U.S.C. 207 during the applicable statute of limitations period related to the construction of the project.

(d) Contract support costs will not be made available to a Tribe in connection with any State funds transferred at the election of a State to the Tribe pursuant to 23 U.S.C. 202(a)(9) or funds awarded to a State pursuant to 49 U.S.C. 5311 that are transferred at the election of a State to FTA for the benefit of a Tribe. However, overhead and administrative expenses may be an eligible use of such funds.

§ 29.419 Does the award of formula funds entitle a Tribe to receipt of contract support costs?

The award of formula funds does not entitle a Tribe to receipt of contract support costs under 25 U.S.C. 5325(a). A funding agreement under this part will not provide additional funds for contract support costs to carry out PSFAs. While a Tribe is not entitled to additional funds for contract support costs, a Tribe may use a portion of its formula funds (§ 29.400(a) and (b)) for overhead and administrative expenses if such costs are reasonable, allowable, and allocable in accordance with 2 CFR part 200 and the applicable statutory and regulatory program requirements.

§ 29.420 Is a Tribe entitled to enter into facility leases from the Department and to receive facility support costs?

A Tribe is not entitled to enter into facility leases with the Department and receive facility support costs. A funding agreement under this part will not provide additional funds for facility leases and facility support costs to carry out PSFAs. However, facility leases and facility support costs may be an eligible and allowable use of funds a Tribe receives under a funding agreement.

Subpart F—Program Operations**Audits and Cost Principles****§ 29.500 Must a Tribe undertake an annual audit?**

A Tribe that meets the applicable thresholds under 2 CFR 200.501 must undertake an annual audit pursuant to the regulations set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except to the extent that part exempts a Tribe from complying with the audit requirements.

§ 29.501 Must a Tribe submit any required audits to the Federal Audit Clearinghouse and the Department?

A Tribe must submit any required audits to the Federal Audit Clearinghouse pursuant to the Office of Management and Budget procedures and provide prompt notice to the Department it has done so.

§ 29.502 How long must a Tribe keep and make records available for Federal examination or audit?

A Tribe must keep books, documents, papers, and records of funding, grants, and State-provided funds for 3 years from the date of submission of the Single Audit Act audit and provide access to the Department or the Comptroller General for audit and examination related to grants, contracts,

compacts subcontracts, sub-grants, or other arrangements.

§ 29.503 Who is responsible for compiling, copying, and paying for materials for any audit or examination?

The agency or entity undertaking the examination or audit will be responsible for all costs associated with an audit or examination of Tribal records. Tribes are responsible to make records available during regular business hours, and may prevent removal of the records from Tribal offices. If an agency or entity undertaking the examination or audit requests that the Tribe make copies of records for its use, the Tribe may charge the examining agency reasonable per-page fees for photocopying or scanning of documents and records.

§ 29.504 How may the Federal Government make a claim against a Tribe relating to any disallowance of costs based on an audit conducted under this part?

(a) *Disallowance of costs.* Any claim by the Federal Government against a Tribe relating to funds included in a funding agreement based on any audit conducted pursuant to this part is subject to 25 U.S.C. 5325(f).

(1) Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs is barred unless the Department provides notice of such a disallowance within 365 days from receiving any required annual audit report. The notice must set forth the right of appeal and hearing in accordance with §§ 29.912 through 29.923.

(2) To calculate the 365-day period, an audit report is deemed received by the Department on the date of electronic submission to the Federal Audit Clearinghouse. The Department has 60 days after receiving the audit report to give notice to the Tribe of its determination to reject an audit report as insufficient due to non-compliance with the applicable provisions of 2 CFR part 200 or any applicable statute.

(b) *Criminal penalties.* Any person, officer, director, agent, employee, or person otherwise connected with a recipient of a contract, subcontract, grant, or sub-grant who embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property provided to the recipient will be fined not more than \$10,000 or imprisoned for not more than 2 years, or both. If the amount of funds in question does not exceed \$100, then the fine will be no more than \$1,000 and imprisonment not more than 1 year, or both.

§ 29.505 What cost principles must a Tribe apply in compacts and funding agreements under this part?

(a) A Tribe must apply the applicable cost principles of the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200, except as modified by:

(1) 25 U.S.C. 5325(k), which sets forth certain categories of allowable uses of funds that a Tribe may include in a funding agreement provided that such use supports implementation of the PSFA.

(2) Other provisions of Federal law; or

(3) Any subsequent exemptions granted by the Office of Management and Budget.

(b) The Department may not require other audit or accounting standards.

Management Systems and Standards**§ 29.506 What are the general financial management system standards that apply to a Tribe when carrying out a compact and funding agreement under this part?**

(a) *Generally.* A Tribe carrying out a compact and funding agreement under this part must develop, implement, and maintain systems that meet the minimum financial standards set forth in this section, unless one or more of the standards have been waived, in whole or in part.

(b) *Applicability to Tribal contractors.* A Tribe may require that its contractors comply with some or all of the standards in this section when the Tribe retains contractors to assist in carrying out the requirements of a funding agreement.

(c) *Evaluation.* When required under 2 CFR part 200, an independent auditor retained by a Tribe must evaluate the financial management systems of the Tribe through an annual audit report in accordance with the Single Agency Audit Act, 31 U.S.C. 7501–7506.

(d) *Financial management systems standards.* The general financial management system standards that apply to a Tribe carrying out a funding agreement under this part must expend and account for funds provided to the Tribe through a funding agreement in accordance with all statutory requirements applicable to the receipt and use of the funds being provided, as well as the requirements set forth in the applicable compact and funding agreement, and applicable provisions of 2 CFR part 200.

§ 29.507 What general minimum standards apply to a Tribe's financial management systems when carrying out a compact and funding agreement?

The following general minimum standards apply to a Tribe's financial management systems when carrying out a compact and funding agreement. The fiscal control and accounting procedures of a Tribe must be sufficient to:

(a) Permit preparation of reports required by the compact, funding agreement, and this part; and

(b) Permit the tracing of program funds to a level of expenditure adequate to establish that the funds have not been used in violation of any restrictions or prohibitions contained in any statute or provision of 2 CFR part 200 that applies to the receipt and use of the funds included in the compact and funding agreement.

§ 29.508 What specific minimum requirements must a Tribe's financial management system include to meet general minimum standards?

To meet the general minimum standards of § 29.507, the financial management system of a Tribe must include the following specific minimum requirements:

(a) *Financial reports.* The financial management system must provide for accurate, current, and complete disclosure of the financial results of activities carried out by the Tribe under a compact and funding agreement;

(b) *Accounting records.* The financial management system must maintain records sufficiently detailed to identify the source and application of funding transferred to the Tribe in a funding agreement. The system must contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income;

(c) *Internal controls.* The financial management system must maintain effective control and accountability for all funds transferred to the Tribe in the funding agreement and for all Federal real property, personal property, and other assets furnished for use by the Tribe under its compact and funding agreement;

(d) *Budget controls.* The financial management system must permit the comparison of actual expenditures or outlays with the amounts budgeted by the Tribe for each funding agreement; and

(e) *Allowable costs.* The financial management system must be sufficient to determine that the expenditure of funds is reasonable, allowable, and allocable based upon the terms of the

funding agreement and applicable provisions of 2 CFR part 200.

§ 29.509 What procurement standards apply to contracts carried out using funds included in a funding agreement?

(a) Each contract carried out using funds included in a funding agreement must, at a minimum:

(1) Be in writing;

(2) Identify the interested parties, their respective roles and responsibilities, and the purposes of the contract;

(3) State the work to be performed under the contract;

(4) State the process for making any claim, the payments to be made, and the terms of the contract; and

(5) State that it is subject to 25 U.S.C. 5307(b) to the extent identified in § 29.525.

(b) A Tribe that chooses to use a procurement method that is not provided for in its established procurement management standards in the delivery of a Tribal transportation project must submit the request to deviate from these standards to the Department for review and approval in accordance with § 29.515. The deviation request must specify the procurement method that the Tribe proposes to use and the project to which such method will be applied.

§ 29.510 What property management systems and standards must a Tribe maintain?

(a) *Property management system.* A Tribe must maintain a property management system to account for all property acquired with funds included in a funding agreement, acquired with Federal funds awarded by the Department or the Department of the Interior, or obtained as excess or surplus Federal property to be used for activities under the Program. The property management system must contain requirements for the use, care, maintenance, and disposition of such property as follows:

(1) Where title vests in the Tribe, in accordance with Tribal law and procedures; or

(2) In the case of a consortium, according to the internal property procedures of the consortium.

(b) *Transit asset management.* In addition to the property management system and standards in this section, property acquired with transit funds (chapter 53 of Title 49 U.S. Code) is subject to the property management requirements set forth in 49 U.S.C. 5326 concerning the transit asset management plan, performance targets, and reports.

(c) *Tracking requirements under a property management system.* The

property management system of the Tribe relating to property used under the Program must track:

(1) Personal property and rolling stock with an acquisition value in excess of \$5,000 per item;

(2) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Tribe; and

(3) Real property.

(d) *Records.* The property management system must maintain records that accurately describe the property, including any serial number, vehicle identification number, or other identification number. These records should contain current information such as the source, titleholder, acquisition date, acquisition cost, share of Federal participation in the cost, location, use and current condition of the property, and the date of disposal and sale price, if any.

(e) *Internal controls.* The property management system must maintain effective internal controls that include, at a minimum, procedures for the Tribe to:

(1) Conduct periodic, physical inventories at least once every 2 years and reconcile such inventories with the Tribal internal property and accounting records;

(2) Prevent loss or damage to property; and

(3) Ensure that property is used by the Tribe to carry out activities under a funding agreement until the Tribe declares the property excess to the needs of the PSFAs carried out by the Tribe under the funding agreement, consistent with the property management system of the Tribe.

(f) *Maintenance requirements.* Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the Tribe and the Department in any express warranties or guarantees covering the property.

(g) *Disposition of personal property acquired under a funding agreement.* Prior to disposition of any personal property, including rolling stock, the Tribe must report to the Chief Self-Governance Official in writing of the property's status (e.g., worn out, lost, stolen, damaged beyond repair, or no longer needed to carry out activities under a funding agreement). The Department will provide disposition instructions in accordance with 2 CFR 200.313. A Tribe may retain, sell or otherwise dispose of personal property with a current per unit fair market value

of \$5,000 or less with no further obligation to the Department.

(h) *Disposition of real property acquired under a funding agreement.* Prior to disposition of any real property acquired under a funding agreement, the Tribe must report to the Chief Self-Governance Official, who will ensure the Department provides disposition instructions in accordance with 2 CFR 200.311.

Records

§ 29.511 Must a Tribe maintain a recordkeeping system?

A Tribe must maintain records and provide Federal agency access to those records as provided in 25 U.S.C. 5386(d) and the statutory requirements of the funds included in a funding agreement.

§ 29.512 Are Tribal records subject to the Freedom of Information Act and Federal Privacy Act?

(a) Except to the extent that a Tribe specifies otherwise in its compact or funding agreement, the records of the Tribe retained by the Tribe will not be considered Federal records for purposes of chapter 5 of title 5, U.S. Code.

(b) Tribal records submitted to the Department are considered Federal records for the purposes of the Freedom of Information Act and Federal Privacy Act. If a Tribe provides information to the Department that the Tribe considers to be trade secret, or confidential commercial or financial information, the Tribe must identify it as such. The Department will not disclose the information to the public, except to the extent required by law. In the event the Department receives a FOIA request for the information, the Department will follow the procedures described in its FOIA regulations at 49 CFR part 7.

§ 29.513 Must a Tribe make its records available to the Department?

After 30 days advance written notice from the Department, a Tribe must provide the Department with reasonable access to such records to enable the Department to meet its minimum legal recordkeeping system and audit requirements.

§ 29.514 How long must a Tribe keep management system records?

A Tribe must keep books, documents, papers, and records of funding, grants, and State-provided funds for 3 years from the date of submission of the Single Audit Act audit such that the Department or the Comptroller General may have access to the records for audit and examination related to grants, contracts, compacts subcontracts, subgrants, or other arrangements.

Procurement

§ 29.515 When procuring property or services with funds included in a funding agreement, can a Tribe follow its own procurement standards?

When procuring property or services with funds included in a funding agreement, a Tribe must have standards that conform to the procurement standards in this subpart. If a Tribe relies upon procurement standards different than those described in § 29.516, it must identify the standards it will use in a proposed waiver in the initial negotiation of a funding agreement or as a waiver request to an existing funding agreement. The Tribe must submit the request to the Department in accordance with § 29.535.

§ 29.516 What are the minimum procurement standards that a Tribe must follow when procuring property or services with funds included in a funding agreement?

A Tribe must follow the minimum procurement standards set forth below when procuring property or services with funds included in a funding agreement.

(a) *Minimum procurement standards.*

(1) A Tribe must ensure that its vendors and contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase agreements or orders.

(2) A Tribe must maintain written standards of conduct governing the performance of its employees who award and administer contracts paid for using funds transferred to the Tribe under a funding agreement.

(i) An employee, officer, elected official, or agent of a Tribe must not participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, as defined in the conflict of interest policies of the Tribe, would be involved.

(ii) Employees, officers, elected officials, or agents of a Tribe, or of a subcontractor of the Tribe, must not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, except that the Tribe may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(iii) The standards must also provide for penalties, sanctions, or other disciplinary actions for violations of the procurement standards.

(3) A Tribe must review proposed procurements to avoid buying unnecessary or duplicative items and

ensure the reasonableness of the price. The Tribe should consider consolidating or breaking out procurement to obtain more economical purchases. Tribes are encouraged to realize economies of scale in the procurement of goods, services, and supplies under this part, including the negotiation of cooperative agreements with other public authorities. Where appropriate, the Tribe must compare leasing and purchasing alternatives to determine which is more economical.

(4) A Tribe must conduct all major procurement transactions that exceed the simplified acquisition threshold set forth in 2 CFR 200.88 by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(i) Consistent with 2 CFR 200.88, a Tribe may develop its own definition for a simplified acquisition threshold.

(ii) A Tribe may apply to any procurement award the Indian preference requirements for wages and grants contained in 25 U.S.C. 5307(b).

(5) A Tribe must make procurement awards only to responsible entities with the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Tribe will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(6) A Tribe must maintain records on the significant history of all major procurement transactions. These records must include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(7) A Tribe is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(i) The settlement of any protest, dispute, or claim will not relieve the Tribe of any obligations under a funding agreement.

(ii) Violations of law must be referred to the Tribal or Federal authority having proper jurisdiction.

(b) *Conflicts of interest.* A Tribe participating in the program must ensure that internal measures and controls are in place to address conflicts of interest in the administration of compacts and funding agreements under this part.

§ 29.517 Do Federal laws and regulations apply to a Tribe's contractors or subcontractors?

A Tribe's contractors are responsible for complying with Federal laws and regulations. Contracts between a Tribe and its contractors should inform contractors that the contract is carried out using funds transferred to the Tribe in a funding agreement, and that the contractors and its subcontractors are responsible for identifying and ensuring compliance with applicable Federal laws and regulations. The Department and the Tribe may, through negotiation, identify all or a portion of such requirements in the funding agreement and, if so identified, these requirements should be identified in the contracts the Tribe awards using funds included in a funding agreement.

§ 29.518 Can a Tribe use Federal supply sources in the performance of a compact and funding agreement?

A Tribe and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) to the same extent as if the Tribe were a Federal agency. The Department will assist the Tribes, to the extent feasible, to resolve any barriers to full implementation.

Reporting

§ 29.519 What reporting must a Tribe provide?

(a) A Tribe must provide reports mandated by statute associated with the funds included in the funding agreement. In accordance with § 29.307, the funding agreement will list these reporting requirements. A Tribe will cooperate with the Department to assist it in complying with its statutory reporting requirements. No additional reporting will be required.

(b) Notwithstanding paragraph (a) of this section, if the Tribe includes funds for a discretionary or competitive grant in a funding agreement, the parties will negotiate the appropriate reporting requirements to include in the funding agreement.

Property

§ 29.520 How may a Tribe use existing Department facilities, equipment, or property?

At the request of a Tribe, the Department will permit a Tribe to use and maintain existing facilities, equipment therein or appertaining thereto, and other personal property, if applicable, owned by the Government within the Department's jurisdiction, subject to terms and conditions agreed to by the Department and the Tribe. The

requested facilities, equipment, or property must be used to carry out the Tribe's PSFAs under the compact and funding agreement. Such facilities, equipment, or other personal property will be eligible for replacement, maintenance, and improvement using funds included in a funding agreement, or the Tribe may expend its own funds. The Department does not have any additional funding sources for replacement, maintenance, or improvement of such facilities, equipment, other personal property. The Department will exercise discretion in a way that gives the maximum effect to the request of a Tribe to use such facilities, equipment, or property.

§ 29.521 How may a Tribe acquire surplus or excess Federal property for use under the Program?

A Tribe may acquire any surplus or excess property for use in the performance of the compact and funding agreement consistent with the procedures established by the General Services Administration. The Tribe must notify the Chief Self-Governance Official of the surplus or excess property it proposes to acquire and the purpose for which it will be used in the performance of the compact or funding agreement. If the Department participates in the acquisition by the Tribe of any excess or surplus Federal property, the Department will expeditiously process the request and assist the Tribe in its acquisition to the extent feasible and exercise discretion in a way that gives maximum effect to the Tribe's request for donation of the excess or surplus Federal property. When the Department's participation is required, the Department should expeditiously request acquisition of the property from General Services Administration or the holding agency, as appropriate, by submitting the necessary documentation prior to the expiration of any "freeze" placed on the property by the Tribe or the Department on the Tribe's behalf. The Tribe must take title to any property acquired pursuant to this section. Such surplus or excess property will be eligible for replacement, maintenance, and improvement using funds included in a funding agreement, or the Tribe may expend its own funds. The Department does not have any additional funding sources for replacement, maintenance, or improvement of such surplus or excess property.

§ 29.522 How must a Tribe use surplus or excess Federal property acquired under the Program?

The Tribe must use any property acquired under this section in a manner consistent with the justification submitted at acquisition. The Tribe should notify the Chief Self-Governance Official whenever use of the property changes significantly and upon disposal or sale.

§ 29.523 If a compact or funding agreement (or portion thereof) is retroceded, reassumed, terminated, or expires, may the Department reacquire title to property purchased with funds under any compact and funding agreement or excess or surplus Federal property that was donated to the Tribe under the Program?

If a compact or funding agreement (or portion thereof) is retroceded, reassumed, terminated, or expires, the Tribe retains title to the property purchased with funds under any compact or funding agreement or excess for surplus Federal property donated under the Program if it is valued at \$5,000 or less. If the value of the property is over \$5,000 at the time of retrocession, withdrawal, or reassumption, title to such property may revert to the Department at the Department's discretion.

Technical Assistance

§ 29.524 What technical assistance is available from the Department?

Upon the written request of a Tribe, and to the extent feasible, the Department will provide technical assistance, including periodic program reviews, to assist a Tribe improve its performance in carrying out the Program.

Prevailing Wages

§ 29.525 Do the wage and labor standards in the Davis-Bacon Act apply to employees of a Tribe?

Wage and labor standards of the Davis-Bacon Act do not apply to employees of a Tribe. However, Davis Bacon wage rates apply to all Tribal contractors and subcontractors.

Tribal Preference

§ 29.526 Does Indian preference apply to PSFAs under the Program?

To the greatest extent feasible, any contract, subcontract, grant, or subgrant under a compact and funding agreement must give preference for employment and training, and the award of subcontracts and sub-grants, to Indians, Indian organizations, and Indian-owned economic enterprises, as defined in 25 U.S.C. 1452.

§ 29.527 When do Tribal employment law and contract preference laws govern?

To the extent provided in applicable Federal law, Tribal law governs Indian preference policies in the performance of a compact and funding agreement under the Program. When a compact or funding agreement is intended to benefit one Tribe, the Tribal employment or contract preference laws adopted by such Tribe will govern with respect to the administration of the compact and funding agreement.

Environmental and Cultural Resource Compliance**§ 29.528 What compliance with environmental and cultural resource statutes is required?**

(a) The Department must meet the requirements of applicable Federal environmental and cultural resource laws, such as the National Environmental Policy Act and the National Historic Preservation Act, for a proposed project under the Program.

(b) The Secretary has delegated environmental and cultural resource compliance responsibilities to the Operating Administrations, as appropriate. As such, an Operating Administration will serve as the lead agency responsible for final review and approval of environmental documents, and any associated environmental determinations and findings for a proposed project under the Program. The Secretary, as delegated to the Operating Administrations, is also responsible for making determinations and issuing approvals in accordance with Section 4(f) (23 U.S.C. 138 and 49 U.S.C. 303), as applicable. Tribes may consult with the Chief Self-Governance Official to determine which Operating Administration should serve as the lead agency.

(c) If the Department is conducting the environmental review process for a proposed project under the Program, the Tribe must assist the Department to satisfy the requirements of applicable Federal environmental and cultural resource laws.

(d) A Tribe may manage or conduct the environmental review process for a proposed project under the Program and may prepare drafts of the appropriate environmental review documents for submission to the Department.

(1) A Tribe may follow its own environmental review procedures if the procedures and documentation also satisfy the Federal environmental review requirements applicable to the project. A Tribe should work with the Operating Administration serving as lead agency to ensure the Tribal process

will satisfy all applicable Federal environmental review requirements.

(2) The Operating Administration serving as lead agency must determine that the process and documentation satisfy the applicable Federal environmental review requirements.

(e) As resources permit and at the request of a Tribe, the Department will provide advice and technical assistance to the Tribe to assist in the management of the Federal environmental review process and preparation of environmental documents.

(f) Unless prohibited by law, a Tribe may use funds included in a funding agreement to pay for environmental review activities.

Federal Tort Claims Act**§ 29.529 Is the Federal Tort Claims Act applicable to a Tribe when carrying out a compact and funding agreement under the Program?**

(a) Section 314 of Public Law 101–512 and 25 U.S.C. 5396(a) incorporated by 23 U.S.C. 207(l)(8) make the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2401, 2671–2680, applicable to a Tribe carrying out a compact and funding agreement under the Program.

(b) Contractors, subcontractors, or sub-recipients of a Tribe are not subject to the terms and conditions of FTCA. The Tribe may use the regulations set forth in 25 CFR part 900, subpart M, as guidance on the Tribe's rights and responsibilities under the FTCA. Accordingly, the Tribe must include, in any contract entered into with funds provided under a compact and funding agreement, a requirement that contractors, sub-contractors, or sub-recipients maintain applicable insurance coverage, such as workers compensation, auto, and general liability insurance, consistent with statutory minimums and local industry standards.

§ 29.530 What steps should a Tribe take after becoming aware of a Federal Tort Claim?

(a) Immediately after receiving a claim or a summons and complaint filed under the FTCA, the Tribe must notify the Chief Self-Governance Official at tsgp@dot.gov or use any other method that provides receipt.

(b) The Tribe, through a designated tort claims liaison assigned by the Tribe, must assist the Department in preparing a comprehensive and factually based report, which will inform the Department's report to the U.S. Department of Justice.

(c) The Tribe's designated tort claims liaison must immediately provide the following significant details of the event

and include, as appropriate and to the extent within their knowledge, possession, or control:

(1) The date, time, and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of Tribal or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all Federal, Tribal, and privately owned property involved, and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State, or Tribal law, ordinance, or regulation;

(7) The Tribe's determination as to whether any of its employees (including Federal employees assigned to the Tribe) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the funding agreement at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats, and photographs of the site or damaged property, that may be necessary or useful for the Department to determine the claim; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The Tribe must cooperate with and provide all necessary assistance to the U.S. Department of Justice and the Department's attorneys assigned to defend the tort claim including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Department, the Tribe must make an assignment and subrogation of all the Tribe's rights and claims (except those against the Federal Government) arising out of a tort claim against the Tribe.

(f) If requested by the Department, the Tribe must authorize representatives of the Department to settle or defend any claim and to represent the Tribe in or take charge of any action. If the Federal Government undertakes the settlement or defense of any claim or action, the Tribe must provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 29.531 Is it necessary for a compact or funding agreement to include any terms about FTCA coverage?

Terms about FTCA coverage are optional in a compact or funding

agreement, and the FTCA applies even if terms regarding FTCA are not included in a compact or funding agreement.

§ 29.532 Does FTCA cover employees of the Tribe who are paid by the Tribe from funds other than those provided through the compact and funding agreement?

Subject to FTCA limitations, the FTCA covers employees of the Tribe who are not paid from compact and funding agreement funds as long as the services out of which the claim arose were performed in carrying out a compact and funding agreement under the Program.

§ 29.533 May persons who are not Indians assert claims under FTCA?

Any aggrieved person may assert claims for alleged torts arising from activities performed in carrying out compacts and funding agreements under the Program.

§ 29.534 Does the year PSFAs are funded affect FTCA coverage?

The year the funding was provided has no effect on the application of the FTCA.

Waiver of Program Regulations

§ 29.535 What is the process for regulation waivers under this part?

(a) A Tribe may request a waiver of a regulation promulgated under this part with respect to a compact or funding agreement. The Tribe must submit the request in writing to the Chief Self-Governance Official to tsgp@dot.gov or use any other method that provides receipt, at the following address: Chief Self-Governance Official, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. The request must be marked with the words "REQUEST TO WAIVE REGULATIONS" on the first page of the request and on the envelope enclosing the request (or in the subject line if by electronic mail). The request must identify the regulation subject to the waiver request, the language the Tribe seeks to waive, and the basis for the request.

(b) Within 10 days of receipt of the waiver request, the Chief Self-Governance Official will send the Tribe an acknowledgement of the waiver request, together with a date-stamped cover sheet that indicates the date on which the Department received the waiver request.

(c) No later than 90 days after the date of receipt of a written request under paragraph (a) of this section, the Department must approve or deny the request in writing. If the application for a waiver is denied, the Department must

provide the Tribe with the reasons for the denial as part of the written response.

(d) The Department will consider the following factors in making its decision on a waiver request:

(1) The extent to which the waiver provides flexibility to facilitate the implementation of the Program at the Tribal level;

(2) The extent to which the Tribe will benefit from the waiver;

(3) Whether the waiver is contrary to Federal law; and

(4) Whether the waiver is consistent with Federal transportation policy.

(e) If the Department does not approve or deny a request submitted under paragraph (a) of this section on or before the last day of the 90-day period, the request will be deemed approved by operation of law.

(f) A decision by the Department on a waiver request is a final agency action subject to judicial review under the Administrative Procedure Act.

Subpart G—Withdrawal

§ 29.600 May a Tribe withdraw from a consortium?

A Tribe may fully or partially withdraw from a consortium in accordance with any applicable terms and conditions of a consortium agreement with the Tribe. The withdrawing Tribe must provide written notification to the consortium and the Department of its decision to withdraw.

§ 29.601 When does a withdrawal become effective?

A withdrawal becomes effective within the time frame specified in the resolution that authorizes the Tribe to withdraw from the consortium. In the absence of a specific time frame set forth in the resolution, such withdrawal becomes effective on:

(a) The earlier of 1 year after the date of submission of such request, or the date on which the funding agreement expires; or

(b) Such date as may be mutually agreed upon by the Department, the withdrawing Tribe, and the consortium that has signed the compact and funding agreement.

§ 29.602 How are funds redistributed when a Tribe fully or partially withdraws from a compact and funding agreement and elects to enter into a compact with the Department?

A withdrawing Tribe that is eligible for the Program under 23 U.S.C. 207(b) and § 29.100 may enter into a compact and funding agreement for its share of funds supporting those PSFAs that the Tribe will carry out, calculated on the

same basis as the funds were initially allocated in the funding agreement of the consortium, unless otherwise agreed to by the consortium and the Tribe.

§ 29.603 How are funds distributed when a Tribe fully or partially withdraws from a compact and funding agreement administered by a consortium serving more than one Tribe, and the withdrawing Tribe elects not to or is ineligible to enter into a compact under this part?

Unless otherwise agreed to by the consortium and the Tribe, the consortium must return to the Department all funds not obligated and expended by the consortium associated with the withdrawing Tribe when the withdrawing Tribe elects not to or is ineligible to enter into a compact under this part.

Subpart H—Retrocession

§ 29.700 May a Tribe retrocede a PSFA and the associated funds?

A Tribe may voluntarily retrocede (fully or partially) its PSFA under a compact and funding agreement under this Part. A Tribe may retrocede for any reason.

§ 29.701 How does a Tribe notify the Department of its intention to retrocede?

(a) *Notice.* A Tribe must submit a written notice of its intent to retrocede to the Chief Self-Governance Official to tsgp@dot.gov or by any other method that provides receipt. The notice must specifically identify those PSFAs the Tribe intends to retrocede.

(b) *Notice to the Department of the Interior.* The Department will send the Tribe's notice of its intention to retrocede to the Department of the Interior and request that the Department of the Interior determine whether the PSFA is associated with transportation services provided by the Department of the Interior.

§ 29.702 What happens if the Department of the Interior determines that it provides the transportation services the Tribe intends to retrocede?

If the Department of the Interior determines that it provides the transportation services the Tribe intends to retrocede, the Department will notify the Tribe. The Tribe must return all remaining funds, less closeout costs, associated with those transportation services to the Department for transfer to the Department of the Interior.

§ 29.703 What happens if the Department of the Interior determines that it does not provide the transportation services the Tribe intends to retrocede?

If the Department of the Interior determines that it does not provide the

transportation services the Tribe intends to retrocede, the Tribe may withdraw its notice to retrocede or return all remaining funds, less closeout costs, associated with the retroceded PSFA, and the Department will distribute those funds in accordance with applicable law.

§ 29.704 What is the effective date of a retrocession?

The retrocession becomes effective within the timeframe specified in the funding agreement. In the absence of a specified date, the retrocession becomes effective:

(a) On the earlier of 1 year after the date of the Tribe's submission of the request, or the date on which the funding agreement expires; or

(b) Such date mutually agreed upon by the Departments and the retroceding Tribe when the Department of the Interior has agreed to assume a retroceded PSFA.

§ 29.705 What effect will a retrocession have on a Tribe's right to compact under the Program?

Provided that a Tribe is eligible under § 29.100, retrocession will not adversely affect any future request by the Tribe to include funds from the same program in a compact or funding agreement.

§ 29.706 Will retrocession adversely affect future funding available for the retroceded program?

Retrocession will not adversely affect future funding for the retroceded program. Future funding will be available to the Tribe at the same level of funding as if there had been no retrocession.

Subpart I—Termination and Reassumption

§ 29.800 When can the Department reassume a compact or funding agreement?

The Department may terminate and reassume a compact or funding agreement (or portion thereof) when the Department makes a specific finding, in writing, to a Tribe, that the Department has found that there is:

(a) Imminent jeopardy to a trust asset, natural resources, or public health and safety that is caused by an act or omission of the Tribe and that arises out of a failure by the Tribe to carry out the compact or funding agreement; or

(b) Gross mismanagement with respect to funds transferred to the Tribe under the compact and funding agreement, as determined by the Department in consultation with the Office of the Inspector General, as appropriate. Gross mismanagement

means a significant, clear, and convincing violation of compact, funding agreement, or regulatory or statutory requirements applicable to Federal funds included in a compact and funding agreement that results in a significant reduction of funds available for the PSFA carried out by the Tribe.

§ 29.801 Can the Department reassume a portion of a compact or funding agreement and the associated funds?

The Department may reassume a portion of a compact or funding agreement and the associated funds if the Department has sufficient grounds to do so. The Department must identify the narrowest portion of the compact or funding agreement for reassumption.

§ 29.802 What process must the Department follow before termination of a compact or funding agreement (or portion thereof)?

Except as provided in § 29.805, prior to a termination becoming effective, the Department must:

(a) Notify the Tribe in writing by any method that provides receipt of the findings required under § 29.800;

(b) Request specific corrective action within a reasonable period of time, no less than 45 days, to correct the conditions that may result in the Department's termination of a compact or funding agreement (or portion thereof);

(c) To the extent feasible and if requested, offer and provide technical assistance to assist the Tribe in overcoming the conditions that led to the findings described under paragraph (a) of this section. Technical assistance may take the form of feedback, review, and other assistance requested, as appropriate; and

(d) Provide an opportunity for a hearing on the record in accordance with Subpart J of this part.

§ 29.803 What happens if the Department determines that the Tribe has not corrected the conditions that the Department identified in the notice?

(a) If the Department determines that the Tribe has not corrected the conditions that the Department identified in the notice, the Department must provide a second written notice by any method that provides receipt to the Tribe that the Department will terminate the compact or funding agreement, in whole or in part.

(b) The second notice must include:

(1) The effective date of the termination;

(2) The details and facts supporting the termination; and

(3) Instructions that explain the Tribe's right to a hearing pursuant to § 29.925.

§ 29.804 When may the Department reassume?

Except as provided in § 29.805, the Department may not reassume until 30 days after the final resolution of the hearing and any subsequent appeals to provide the Tribe with an opportunity to take corrective action in response to any adverse final ruling.

§ 29.805 When can the Department immediately terminate a compact or funding agreement (or portion thereof)?

(a) The Department may immediately terminate a compact or funding agreement (or a portion thereof) if:

(1) The Department makes a finding of imminent substantial and irreparable jeopardy to a trust asset, natural resource, or public health and safety; and

(2) The jeopardy arises out of a failure to carry out the compact or funding agreement.

(b) The Department must provide notice of immediate termination by any method that provides receipt. The notice must set forth the findings that support the Department's determination, advise the Tribe whether it will be reimbursed for any closeout costs incurred after the termination, request the return of any property, and advise the Tribe of its right to a hearing pursuant to § 29.925. Concurrently, the Department must notify the Office of Hearings that the Department intends to immediately terminate a compact or funding agreement. Pursuant to § 29.928, the Department has the burden of proof in any hearing or appeal of an immediate termination.

§ 29.806 Upon termination, what happens to the funds associated with the terminated portions of the compact or funding agreement?

Upon termination, the Department will reassume the remaining funds associated with the terminated portions of the compact or funding agreement. The Department may:

(a) Transfer funds associated with transportation services provided by the Department of the Interior to the Department of the Interior; or

(b) Distribute any funds not transmitted to the Department of the Interior in accordance with applicable law.

Subpart J—Dispute Resolution and Appeals

§ 29.900 What is the purpose of this subpart?

This subpart sets forth procedures that a Tribe may use to resolve disputes with the Department arising before or after the execution of a compact or

funding agreement under the Program. It also sets forth the process for filing and processing administrative appeals.

§ 29.901 Can a Tribe and the Department resolve disputes using alternative dispute resolution processes?

At any time, a Tribe or the Department may request an informal process or an alternate dispute resolution procedure, such as mediation, conciliation, or arbitration, to resolve disputes. The goal of any such process (which may involve a third party) is to provide an inexpensive and expeditious mechanism to resolve disputes by mutual agreement instead of an administrative or judicial proceeding. The parties should resolve disputes at the lowest possible staff level whenever possible.

§ 29.902 Does the Equal Access to Justice Act apply to the Program?

The Equal Access to Justice Act (EAJA), 5 U.S.C. 504 and 28 U.S.C. 2414, and the relevant implementing regulations (48 CFR 6101.30 and 6101.31; 49 CFR part 6) will apply if the Tribe's compact or funding agreement make these provisions applicable.

§ 29.903 What determinations may not be appealed under this subpart?

The following determinations may not be appealed under this subpart:

(a) *Waiver determination.* A waiver determination made pursuant to § 29.535 is a final agency action subject to judicial review under the Administrative Procedure Act.

(b) *Disputes or appeals arising under other Federal laws.* Decisions made under other Federal statutes, such as the Freedom of Information Act and the Privacy Act. Such decisions may be appealable under those statutes and their implementing regulations.

(c) *Selection and award decisions for competitive or discretionary grants.* The Department's selection and level of award decisions for competitive or discretionary grants administered by the Department are not subject to appeal.

Pre-Award Decisions

§ 29.904 What are pre-award decisions that a Tribe may appeal?

A Tribe may appeal pre-award decisions, which include:

- (a) A decision whether to include a Department program in a funding agreement;
- (b) A decision whether an activity is an inherent Federal function;
- (c) A decision on a final offer before the Department and the Tribe enter into a compact or funding agreement;
- (d) A decision on a final offer before the Department and the Tribe execute

an amendment modifying the terms of an existing compact or funding agreement; and

- (e) An eligibility determination.

§ 29.905 To whom does a Tribe appeal a pre-award decision?

A Tribe appeals a pre-award decision to a hearing official, who was not involved in the initial decision, appointed by the General Counsel.

§ 29.906 Must a Tribe exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts for a pre-award decision?

A Tribe must exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts except a Tribe may appeal the rejection of a final offer directly to the U.S. District Courts in lieu of an administrative appeal.

§ 29.907 When and how must a Tribe appeal a pre-award decision?

(a) A pre-award decision becomes final 30 days after receipt by the Tribe. To appeal the pre-award decision, a Tribe must submit the written request to the Office of the General Counsel and the official whose decision the Tribe is appealing within 30 days of receiving the decision. The request must include a statement describing the reasons for appeal and any supporting documentation.

(b) The Tribe may request to resolve the dispute using an alternative dispute resolution process before the hearing official issues a decision.

§ 29.908 May a Tribe request an extension of time to file an administrative appeal to the hearing official?

If a Tribe needs additional time, it may request an extension of time to file an appeal of a pre-award decision. Within 30 days of receiving a decision, a Tribe must request the extension from the Office of the General Counsel, which has the discretion to grant the extension. The request must be in writing and give a reason for not filing its administrative appeal within the 30-day period. The Department may accept an appeal after the 30-day period for good cause.

§ 29.909 When and how must the hearing official respond to the Tribe's appeal?

(a) The hearing official must issue a decision in writing within 60 days of the receipt of the appeal. If the Tribe requests an informal hearing, the hearing official must issue a decision within 60 days of the hearing.

(b) All decisions issued by the hearing official must include a statement describing the rights of a Tribe to appeal

the decision to the U.S. District Courts. The Department must provide the decision by any method that provides a receipt.

§ 29.910 What is the Department's burden of proof for appeals of pre-award decisions?

The Department must demonstrate by clear and convincing evidence the validity of a pre-award decision, and that the decision is consistent with 23 U.S.C. 207.

§ 29.911 What is the effect of a pending appeal on negotiations?

A pending appeal of a pre-award decision will not prevent the Department from negotiating and executing the non-disputed, severable portions of a compact or funding agreement or prevent the Department from awarding funds to the Tribe that may be included in a funding agreement.

Post-Award Disputes

§ 29.912 What is a post-award dispute?

A post-award dispute is a claim that arises under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 7101–7109. Such disputes arise once a compact or funding agreement is executed. Post-award disputes include:

- (a) Disputed interpretation of a provision of an executed compact or funding agreement;
- (b) Disallowance of costs under a funding agreement;
- (c) Suspension of payments under a funding agreement;
- (d) Allocation, distribution, or reduction of funds when a dispute arises between a consortium and a withdrawing Tribe;
- (e) Failure to comply with the terms of a funding agreement; and
- (f) Any other claim arising out of a compact or funding agreement.

§ 29.913 What is a claim under the Contract Disputes Act?

A Contract Disputes Act claim is a written demand filed by a Tribe that seeks one or more of the following:

- (a) Payment of a specific sum of money under the funding agreement;
- (b) Adjustment or interpretation of terms in a funding agreement;
- (c) Payment that is disputed as to liability or amount;
- (d) Payment that the Department has not acted upon in a reasonable time following a demand for payment; or
- (e) Any other claim relating to the terms of the compact or funding agreement.

§ 29.914 How does a Tribe file a Contract Disputes Act claim?

A Tribe must submit its claim in writing to the Chief Self-Governance Official, who serves as the Department's awarding official for the purposes of Contract Disputes Act claims. The Chief Self-Governance Official will document the receipt of the claim.

§ 29.915 Must a Tribe certify a Contract Disputes Act claim?

A Tribe must certify a claim for more than \$100,000 in accordance with the Contract Disputes Act. The Tribe must certify that:

- (a) The claim is made in good faith;
- (b) Supporting documents or data are accurate and complete to the best of the Tribe's knowledge and belief;
- (c) The amount claimed accurately reflects the amount the Tribe believes is owed; and
- (d) The individual making the certification is authorized to make the claim on behalf of the Tribe and bind the Tribe with respect to the claim.

§ 29.916 Who bears the burden of proof in a Contract Disputes Act claim?

The Tribe bears the burden of proof to demonstrate, by a preponderance of the evidence, the validity of a Contract Disputes Act claim.

§ 29.917 What is the Department's role in processing the Contract Disputes Act claim?

(a) The Department must document the date that the Chief Self-Governance Official received the claim.

(b) The Chief Self-Governance Official must provide the Tribe with an opportunity to resolve the claim informally with assistance from Department officials who have not substantially participated in the disputed matter. Such informal mechanisms may include participating in dispute resolution pursuant to § 29.901.

(c) If the Department and the Tribe do not agree on a settlement, the Chief Self-Governance Official must issue a written decision on the claim by any method that provides a receipt.

§ 29.918 What information must the Chief Self-Governance Official's decision contain?

- (a) The Chief Self-Governance Official's decision must:
 - (1) Describe the claim or dispute;
 - (2) Reference the relevant terms of the compact and funding agreement;
 - (3) Set forth the factual areas of agreement and disagreement; and
 - (4) Set forth the Chief Self-Governance Official's decision, and provide the facts and reasons that support the decision.

(b) The Chief Self-Governance Official must provide the decision to the Tribe and describe the Tribe's appeal rights in language similar to the following:

This is a final decision. You may appeal this decision to the Civilian Board of Contract Appeals (CBCA), 1800 F Street NW, Washington, DC 20245. If you decide to appeal, you must provide written notice within 90 days of receipt of this decision to the CBCA and provide a copy to the Chief Self-Governance Official. The notice must indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the CBCA, you may bring an action in the U.S. Court of Federal Claims or U.S. District Courts within 12 months of the date you receive this notice. If you do not appeal a decision within one of these time periods, it is not subject to further review.

§ 29.919 When must the Chief Self-Governance Official issue a written decision on the claim?

(a) If the claim is for less than \$100,000, the Tribe may request that the Chief Self-Governance Official issue a decision within 60 days of the date of receipt of the claim. If the Tribe does not request that the Chief Self-Governance Official issue a decision within 60 days of the date of receipt of the claim, the Chief Self-Governance Official must issue a decision within a reasonable time, which will depend on the size and complexity of the claim and the adequacy of the information provided in support of the claim. The Tribe must request a decision by the Chief Self-Governance Official before seeking an appeal in accordance with paragraph (c) of this section.

(b) If the claim is for more than \$100,000, the Chief Self-Governance Official must issue a decision within 60 days of the date of receipt of the claim or notify the Tribe of the time within which the Chief Self-Governance Official will issue a decision. Such timeframe must be reasonable, which will depend on the size and complexity of the claim and the adequacy of the information provided in support of the claim.

(c) If the Chief Self-Governance Official does not issue a decision within these time frames, a Tribe may treat the delay as a denial and appeal the decision in accordance with § 29.921.

§ 29.920 Is a decision of the Chief Self-Governance Official final?

(a) A decision of the Chief Self-Governance Official is final and conclusive, and not subject to review, unless the Tribe timely commences an

appeal or suit pursuant to the Contract Disputes Act.

(b) Once the Chief Self-Governance Official issues a decision, the decision may not be changed except by agreement of the parties or under the following limited circumstances:

- (1) Evidence is discovered that could not have been discovered through due diligence before the Chief Self-Governance Official issued the decision;
- (2) The Chief Self-Governance Official learns that there has been fraud, misrepresentation, or other misconduct by a party;
- (3) The decision is beyond the scope of the Chief Self-Governance Official's authority;
- (4) The claim has been satisfied, released, or discharged; or
- (5) Any other reason justifying relief from the decision.

(c) If the Chief Self-Governance Official withdraws a decision and issues a new decision that is not acceptable to the Tribe, the Tribe may appeal the new decision in accordance with § 29.921. If the Chief Self-Governance Official does not issue a new decision, the Tribe may proceed under § 29.919(c).

(d) If a Tribe files an appeal or suit, the Chief Self-Governance Official may modify or withdraw the final decision before a decision is issued in the pending appeal.

§ 29.921 Where may a Tribe appeal the Chief Self-Governance Official's decision on a Contract Disputes Act claim?

A Tribe may appeal the Chief Self-Governance Official's decision on a Contract Disputes Act claim in one of the following forums:

- (a) The Civilian Board of Contract Appeals. The appeal must be in accordance with the Board's implementing regulations in 48 CFR part 6101;
- (b) The U.S. Court of Federal Claims; or
- (c) The U.S. District Courts.

§ 29.922 May a party appeal a Civilian Board of Contract Appeals decision?

A party may appeal a decision of the Civilian Board of Contract Appeals within 120 days to the U.S. Court of Appeals for the Federal Circuit.

§ 29.923 What is the effect of a pending appeal?

- (a) A Tribe must continue performance in accordance with the compact and funding agreement during the appeal of any claims to the same extent the Tribe would have performed had there been no dispute.
- (b) A pending dispute will not affect or prevent the negotiation or award of any subsequent compact or funding

agreement between the Department and the Tribe.

Termination Appeals

§ 29.924 May a Tribe appeal the Department's decision to terminate a compact or funding agreement?

A Tribe may appeal the Department's decision to terminate a compact or funding agreement to the Department's Office of Hearings.

§ 29.925 Is a Tribe entitled to a hearing on the record?

(a) The Department must provide a Tribe with a hearing on the record for a non-immediate termination prior to or in lieu of the corrective action period set forth in the termination notice as described in § 29.802.

(b) The Department must provide a Tribe with a hearing on the record for an immediate termination. The Department and the Tribe will work together to determine a mutually acceptable time and place for the hearing. The hearing on the record must commence no later than 10 days after the date of such termination or a later date upon mutual agreement. If feasible, the hearing may occur virtually or telephonically. If requested by the Tribe, the Department may arrange for an in-person hearing.

(c) The Tribe may decline a hearing in writing.

§ 29.926 What rights do the parties have in an appeal of a termination decision?

(a) During the appeal of a termination decision, a Tribe and the Department have the right to:

- (1) A designated representative;

(2) Present the testimony of witnesses, orally or in writing, who have knowledge of the relevant issues;

(3) Cross-examine witnesses;

(4) Introduce oral or documentary evidence, or both;

(5) Receive, upon request and payment of reasonable costs, a copy of the transcript of the hearing, and copies of all documentary evidence that is introduced at the hearing;

(6) Take depositions, request the production of documents, serve interrogatories on other parties, and request admissions; and

(7) Any other procedural rights established under the Administrative Procedure Act.

(b) An administrative law judge assigned by the chief administrative law judge of the Department's Office of Hearings must conduct hearings on the record for a termination decision unless the Tribe waives the hearing.

§ 29.927 What notice and service must the parties provide?

(a) The parties must file each document with U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) The parties must serve copies of each document with:

(1) The Chief Self-Governance Official; and

(2) The authorized Tribal representative.

§ 29.928 What is the Department's burden of proof for a termination decision?

The Department must demonstrate by clear and convincing evidence the

validity of the grounds for the termination.

§ 29.929 How will the Department communicate its decision following a hearing on a termination decision?

After the hearing or any post-hearing briefing schedule established by the Department's Office of Hearings, the administrative law judge must send all parties the decision by any method that provides a receipt. The decision must contain the administrative law judge's findings of fact and conclusions of law on all the issues.

§ 29.930 May a party appeal the decision of an administrative law judge?

The decision of an administrative law judge is a final agency action subject to judicial review under the Administrative Procedure Act, and a party may appeal it to the U.S. District Courts.

§ 29.931 What is the effect of an appeal on negotiations?

A pending appeal of a termination decision will not affect or prevent the award of another funding agreement or TTP agreement. However, if the Department terminates all or a portion of a compact or funding agreement due to a finding of gross mismanagement or imminent jeopardy, which is sustained on appeal, and the Tribe has not corrected the adverse findings, the Department has discretion to reject a proposal to award the Tribe a new funding agreement or provide new funds in an existing funding agreement.

[FR Doc. 2019-21464 Filed 10-1-19; 8:45 am]

BILLING CODE 4910-9X-P



FEDERAL REGISTER

Vol. 84

Wednesday,

No. 191

October 2, 2019

Part V

The President

Proclamation 9933—National Domestic Violence Awareness Month, 2019

Proclamation 9934—Gold Star Mother's and Family's Day, 2019

Proclamation 9935—National Hunting and Fishing Day, 2019

Executive Order 13889—Continuance of Certain Federal Advisory Committees

Presidential Documents

Title 3—

Proclamation 9933 of September 27, 2019

The President

National Domestic Violence Awareness Month, 2019

By the President of the United States of America

A Proclamation

Domestic violence poisons relationships, destroys lives, and shatters the bedrock of our society—the family. Homes should be places of comfort and stability where love and mutual respect thrive. Domestic violence erodes this environment, leaving many Americans in potentially life-threatening situations. As a Nation, we must resolve to have zero tolerance for acts of domestic violence. During National Domestic Violence Awareness Month, we reaffirm our steadfast commitment to empowering survivors and ending this deeply destructive abuse.

Domestic violence affects Americans regardless of income, race, gender, or socioeconomic status. Still, women make up a disproportionately higher number of victims of domestic violence, with nearly half of female homicide victims killed by a current or former male partner. Each of us has a duty to speak out against these crimes and to make every effort to prevent such tragedies from occurring. Together, we can ensure those who have suffered at the hands of abusers receive needed care and support, and we can protect potential victims from future abuse.

My Administration has made it a priority to provide victims of domestic violence with needed assistance. The Department of Justice's Office on Violence Against Women (OVW) funds critical services and training across the country to prevent domestic violence and to support law enforcement efforts to hold domestic violence offenders accountable for their crimes. To support law enforcement in Alaska Native villages and address the complex, unique, and dire public safety challenges those communities are facing, OVW is funding specialized training and technical assistance on enforcement of Tribal protection orders. In fiscal years 2018 and 2019, approximately \$8 billion—a historic amount—has been made available for victim services through the Department of Justice's Office for Victims of Crime, funding more than 3,000 domestic violence local service providers and national domestic violence hotlines. These services assist more than 2 million domestic violence victims annually, helping individuals and families heal from physical and psychological wounds.

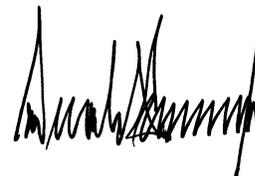
The Department of Health and Human Services (HHS) provides resources to help survivors of domestic violence rebuild safe, stable, and self-sufficient lives. HHS supports initiatives to train healthcare providers to assist those who have suffered from domestic violence. Through Project Catalyst, clinics are educating all patients about domestic violence, sexual violence, and human trafficking, and they are connecting people in need to local service providers. In fiscal year 2019, HHS provided 143 grants to Tribes and Tribal organizations to assist in efforts to increase public awareness about domestic violence and to provide immediate shelter and supportive services for victims and their children.

This month, we strengthen our resolve to ensure homes are places of refuge, comfort, and protection—and not places of fear and abuse. We renew our commitment to support and protect victims, hold perpetrators accountable, and prevent violence before it starts. We strive to eliminate domestic violence

in all its horrific forms in order to sustain the hope of a better life for victims and to foster safer homes and relationships for all Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2019 as National Domestic Violence Awareness Month. I call upon all Americans to stand firm in condemning domestic violence and supporting survivors of these crimes in finding the safety and recovery they need. I also call upon all Americans to support, recognize, and trust in the efforts of law enforcement and public health and social services providers to hold offenders accountable, protect victims of crime and their communities, and prevent future violence.

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



Presidential Documents

Proclamation 9934 of September 27, 2019

Gold Star Mother's and Family's Day, 2019

By the President of the United States of America

A Proclamation

Every life lost in service to our country is precious and irreplaceable. Our deepest sympathy, utmost respect, unwavering support, and profound gratitude go to the families who must endure the ongoing pain of such loss. On Gold Star Mother's and Family's Day, we solemnly honor these families and pray for their continued strength and courage.

Since the founding of our Republic, our liberty has been defended by our men and women in uniform. Their love of country and devotion to duty represent the very best of America. Our Nation's military families share in the demands and pressures of this noble calling. The cost is exceedingly high—with multiple deployments, relocations, and separations—but the sobering price of their sacrifice is most clearly seen in the families who have faced the life-altering loss of a father, mother, son, daughter, sister, or brother who died fighting for our freedom.

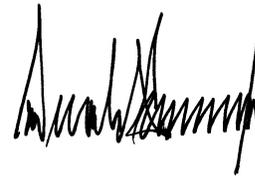
Because of tragedies that forever change the course of their lives, these families receive the designation of the Gold Star. Each story is unique; each death is profoundly personal. The fallen leave behind families who must learn to carve out a new future while coping with their loved one's absence on holidays, at celebrations, and during everyday activities. Their pain permeates every facet of life, never fully fading.

Yet, in spite of their challenges and heartbreak, Gold Star families exemplify amazing grace and resilience. From the depths of grief, they emerge to find hope, purpose, and joy, serving as an example and a source of inspiration for others. These patriots know the true cost of freedom, and it is the responsibility of all Americans to stand alongside them and share in shouldering this profound burden.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895 as amended), has designated the last Sunday in September as "Gold Star Mother's Day."

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Sunday, September 29, 2019, as Gold Star Mother's and Family's Day. I call upon all Government officials to display the flag of the United States over Government buildings on this special day. I also encourage the American people to display the flag and hold appropriate ceremonies as a public expression of our Nation's gratitude and respect for our Gold Star Mothers and Families.

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

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive script.

Presidential Documents

Proclamation 9935 of September 27, 2019

National Hunting and Fishing Day, 2019

By the President of the United States of America

A Proclamation

Since our Nation's earliest days, hunting and fishing have remained enduring pastimes that are inextricably linked to the American experience. For the first American settlers and Native Americans, hunting and fishing were a means of survival. Today, hunters and anglers of all ages carry on these traditions in the spirit of rugged individualism to provide for their families and to show the next generation of Americans the splendor of the great outdoors. On National Hunting and Fishing Day, we celebrate their stewardship of the natural world, their contributions to our thriving economy, and America's abundant natural resources and beauty.

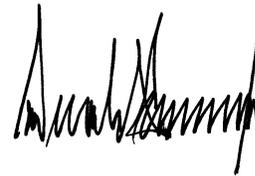
Our lands and waters have long been among our Nation's greatest national treasures, and sportsmen and women are at the forefront of conservation efforts to sustain them for centuries to come. Hunters and anglers play an integral role in maintaining the health of our Nation's ecosystems and preserving our country's private and public lands for wildlife and all those who love the outdoors. They understand the relationship between humankind and nature, and they cultivate a profound respect for our natural resources, passing on values that have strengthened generations of American families and communities.

Hunters and anglers also play a vital role in fueling our robust economy. Wildlife-related recreation supports 480,000 jobs annually, and more than 100 million Americans participated in wildlife-related activities in 2016. These people included approximately 46 million hunters and anglers, who spent more than \$70 billion on equipment, travel, and other expenses, underscoring the importance of hunting and fishing to both our economy and our way of life.

To further promote participation in hunting and fishing, my Administration remains committed to facilitating greater access to the boundless opportunities afforded by our great outdoors. We have opened or expanded hunting and fishing opportunities on nearly 1.8 million acres of lands and waters. In March, I signed into law the John D. Dingell, Jr. Conservation, Management, and Recreation Act, which designates new acreage as wilderness areas and increases access to public lands and waters for hunters and anglers to enjoy. Today, we recognize the ways in which hunters and anglers embody the American values of freedom and self-reliance, and we encourage all Americans to enjoy the natural beauty of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 28, 2019, as National Hunting and Fishing Day. I call upon the people of the United States to join me in recognizing the contributions of America's hunters and anglers, and all those who work to conserve our Nation's fish and wildlife resources.

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

A handwritten signature in black ink, appearing to be "Donald Trump", located in the lower right quadrant of the page.

Presidential Documents

Executive Order 13889 of September 27, 2019

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President, by the Constitution and the laws of the United States of America, and consistent with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 2021.

(a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior).

(b) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).

(c) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation).

(d) President's Export Council; Executive Order 12131, as amended (Department of Commerce).

(e) President's Committee on the International Labor Organization; Executive Order 12216, as amended (Department of Labor).

(f) President's National Security Telecommunications Advisory Committee; Executive Order 12382, as amended (Department of Homeland Security).

(g) National Industrial Security Program Policy Advisory Committee; Executive Order 12829, as amended (National Archives and Records Administration).

(h) Trade and Environment Policy Advisory Committee; Executive Order 12905 (Office of the United States Trade Representative).

(i) Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation; Executive Order 12915 (Environmental Protection Agency).

(j) National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation; Executive Order 12915 (Environmental Protection Agency).

(k) Good Neighbor Environmental Board; Executive Order 12916, as amended (Environmental Protection Agency).

(l) Presidential Advisory Council on HIV/AIDS; Executive Order 12963, as amended (Department of Health and Human Services).

(m) President's Committee for People with Intellectual Disabilities; Executive Order 12994, as amended (Department of Health and Human Services).

(n) Advisory Board on Radiation and Worker Health; Executive Order 13179 (Department of Health and Human Services).

(o) National Infrastructure Advisory Council; Executive Order 13231, as amended (Department of Homeland Security).

(p) President's Council on Sports, Fitness, and Nutrition; Executive Order 13265, as amended (Department of Health and Human Services).

(q) President's Advisory Commission on Asian Americans and Pacific Islanders; Executive Order 13872 (Department of Commerce).

(r) President's Council of Advisors on Science and Technology; Executive Order 13539, as amended (Department of Energy).

(s) Interagency Task Force on Veterans Small Business Development; Executive Order 13540 (Small Business Administration).

(t) State, Local, Tribal, and Private Sector (SLTPS) Policy Advisory Committee; Executive Order 13549 (National Archives and Records Administration).

(u) President's Advisory Commission on Educational Excellence for Hispanics; Executive Order 13555 (Department of Education).

(v) President's Advisory Commission on Educational Excellence for African Americans; Executive Order 13621 (Department of Education).

(w) President's Advisory Council on Doing Business in Africa; Executive Order 13675, as amended (Department of Commerce).

(x) Commerce Spectrum Management Advisory Committee; initially established pursuant to Presidential Memorandum on Improving Spectrum Management for the 21st Century (November 30, 2004) (Department of Commerce).

(y) National Space-Based Positioning, Navigation, and Timing Advisory Board; National Security Presidential Directive-39, "U.S. National Space-Based Position, Navigation, and Timing Policy" (December 8, 2004) (National Aeronautics and Space Administration).

(z) San Juan Islands National Monument Advisory Committee; Proclamation 8947 of March 25, 2013 (Department of the Interior).

(aa) Bears Ears National Monument Advisory Committee; Proclamation 9558 of December 28, 2016, as amended (Department of the Interior).

(bb) Gold Butte National Monument Advisory Committee; Proclamation 9559 of December 28, 2016 (Department of the Interior).

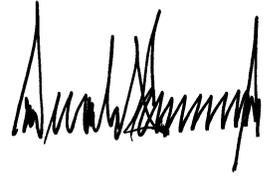
(cc) Grand Staircase-Escalante National Monument Advisory Committee; Proclamation 9682 of December 4, 2017 (Department of the Interior).

(dd) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 13779 (Department of Education).

Sec. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order shall be performed by the head of the department or agency designated after each committee, in accordance with the regulations, guidelines, and procedures established by the Administrator of General Services.

Sec. 3. Sections 1 and 2 of Executive Order 13811 of September 29, 2017, are hereby superseded by sections 1 and 2 of this order.

Sec. 4. This order shall be effective September 30, 2019.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
September 27, 2019.

[FR Doc. 2019-21630
Filed 10-1-19; 11:15 am]
Billing code 3295-F0-P

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Wednesday, October 2, 2019

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